



**Purchasing and Warehouse Operations Services
130 Trinity Avenue, S.W.
4th Floor
Atlanta, Georgia 30303**

Request for Proposal

For

Instructional Materials and Supplies

March 26, 2019

RFP Number: **2019-0062**

Due Date: **April 23, 2019**

Time Due: **11:00 a.m., ET**

NIGP Commodity Code(s): **785-32, 785-45, 785-70, 785-88, 785-92**

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ADVERTISEMENT FOR REQUEST FOR PROPOSALS

Atlanta Public Schools invites vendors to submit their proposal to provide instructional materials and supplies.

If you are unable to download these documents, you may contact the assigned procurement officer: Joyce Carter at (404) 802-2593 or jcarter@atlanta.k12.ga.us.

Proposals shall be submitted online at <https://aps.bonfirehub.com/projects/view/14321>. The Office of Purchasing and Warehouse Operations Services will only accept proposals submitted online. Proposals submissions are due no later than 11:00 a.m., ET, April 23, 2019 (as determined by the time stamp clock when submitted online).

APS will **only** accept online submissions for this RFP. Proposals can be submitted online at: <https://aps.bonfirehub.com/projects/view/14321>. Proposals submitted after the bid close date will not be accepted. Note: Any proposal submitted in any other format (email, paper, fax, mail, etc.) will not be accepted for any reason.

To ensure proper and timely online submission please adhere to the dates and times outlined below.

ATLANTA PUBLIC SCHOOLS



Alisa Morningstar

Executive Director of Purchasing and Warehouse Operations Services

TENTATIVE TIMELINE

- 03/26/2019 Release RFP to the marketplace
- 04/9/2019 Deadline for written questions, 12:00 p.m., ET
- 04/12/2019 Response to questions to be posted to Bonfire
- 04/23/2019 RFP due online Bonfire by 11:00 a.m., ET
- 04/23/2019 Administrative Review
- 04/26/2019 Evaluation
- 06/03/2019 Recommendation to the APS Board of Education

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1.0 PURPOSE

- 1.1. The Atlanta Independent School System (hereinafter, "Atlanta Public Schools" or "APS") is requesting vendors to submit a proposal to provide instructional materials and supplies.

- 1.2. In using this method for solicitation, we are requesting your best effort in seeking the best value for our requirements. To be eligible for consideration, online proposals shall be presented in accordance with the instructions of this solicitation and within the timeframe specified. It shall be the responsibility of the selected Offeror to meet all specifications and guidelines set forth herein. Atlanta Public Schools, at its discretion, determines the criteria and process whereby proposals are evaluated and awarded. No damages shall be recoverable by any challenger as a result of these determinations or decisions by Atlanta Public Schools.

2.0 CURRENT SITUATION

- 2.1 APS has contracts with multiple vendors to provide instructional materials and supplies on an as needed basis.

- 2.2 APS is assigned a dedicated account representative that is responsible for coordination and problem resolution. This person is also responsible for generating usage reports and facilitating quarterly account reviews. Reports are submitted which includes total dollars spent by the district in various categories and improvement goals for future quarters.

3.0 SCOPE OF WORK

- 3.1 Materials and supplies may be purchased from the following categories:
 - a. Art
 - b. Drama / Dance
 - c. Early Learning
 - d. Health
 - e. History
 - f. Language Arts
 - g. Math
 - h. Music
 - i. Physical Education
 - j. Reading
 - k. Science
 - l. Social Studies
 - m. Visual Arts
 - n. World Languages (Spanish, French, Arabic, Chinese, Latin)

- 3.2 APS will not guarantee minimum or maximum quantities to be purchased or amount to be spent.

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3.3 Orders

- a. Orders shall be placed on an as needed basis by schools and departments.
- b. Orders shall be shipped F.O.B. destination with inside delivery.
- c. Deliveries shall be made Monday – Friday between 9:00 a.m. - 3:00 p.m., ET.

3.4 Purchase Orders

- a. Vendor must be able to accept purchase orders.
- b. Purchase orders will be delivered to vendor via e-mail.

3.5 Reporting

- a. Vendor shall provide reports by month, quarter or annually to APS as requested.
- b. Reports may include but not be limited to:
 - Total value of orders (district wide and individual locations).
 - Number of orders placed using purchase orders and p-card.
 - Number of orders placed by individual locations.
 - Number of returns due to APS error and vendor error.
- c. Reports shall be provided in an electronic format in Microsoft Excel.

4.0 GENERAL TERMS AND CONDITIONS

By submitting a response to this request, the offeror accepts the responsibility of reading, understanding and abiding by the General Terms and Conditions below:

4.1 INTRODUCTION

To be entitled for consideration, proposals shall be submitted online at <https://aps.bonfirehub.com/projects/view/14321>. The Office of Purchasing and Warehouse Operations Services will only accept proposals submitted online. Proposals submissions are due 11:00 a.m., ET on the date outlined in each solicitation (as determined by the time stamp clock when submitted online).

Proposals can be submitted online at:

<https://aps.bonfirehub.com/projects/view/14321> Proposals submitted after the proposal close date will not be accepted. Note: Any proposal submitted in any other format (email, paper, fax, mail, etc.) will not be accepted for any reason.

4.2 OWNER

The Owner for whom the work will be executed is: Atlanta Independent School System (hereinafter “APS”, “District”, or the “Board”).

4.3 PURCHASING POLICY

The APS Purchasing Policy, Procedures and Regulations are incorporated in this solicitation (and, therefore, any contract awarded as the result of this solicitation) by reference. By participation in this solicitation, the Offeror agrees to be bound by the APS Purchasing Policy, Procedures and Regulations in any issue or action related to this solicitation or subsequent contract resulting from this solicitation.

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4.4 ADDENDUM

Addendum(s) issued in writing during the time of solicitation will be incorporated in the subsequent contract. No oral interpretations will be made to Offeror as to meaning of solicitation documents. Requests for such interpretations shall be made in writing to the Executive Director of Purchasing and Warehouse Operations Services not later than seven (7) days prior to the time for receiving proposals, and failure on the part of the successful vendor to submit a written request for interpretation shall not relieve them of the obligation to execute such work in accordance with a later interpretation by the APS. All interpretations made to the offerors shall be made in the form of an addendum to the solicitation documents and sent to all who have obtained these solicitation documents from the APS Purchasing and Warehouse Operations Services Department. If solicitation documents were obtained via the APS website, review website for any addendum(s) up until the date and time proposal is due.

It is the offeror's responsibility to check the APS website for any addendums, responses to vendor questions, or other communications regarding the solicitation.

4.5 VENDOR ELIGIBILITY AND FORMAL SOLICITATION INFORMATION

Vendor Registration

In order to do business with APS a vendor must first register with the Department. The vendor must complete and submit an application to Procurement Services. The application is available on the Atlanta Public Schools web site at: <http://www.atlanta.k12.ga.us>, Department, Procurement, Vendor Registration. The application takes 5-7 business days to process. Once the application has been processed the vendor will be assigned a vendor number. Vendors are responsible for notifying Purchasing and Warehouse Operations Services of any changes in company or company contact information.

Eligibility

Because APS is committed to awarding contracts to responsible parties, entities listed on the United States Government's System For Award Management (sam.gov) that have an active exclusion will not be eligible for a contract award.

Formal Solicitations

Under board policy DJEA a formal solicitation is required for all purchases and contracts that exceed \$25,000. All formal solicitations must be conducted by the Procurement Service Department. All contracts with a total value over \$100,000 require board approval.

All formal solicitations are advertised on:

- (1) Bonfire website at <https://aps.bonfirehub.com/portal>
- (2) Georgia Procurement Registry at <https://ssl.doas.state.ga.us/PRSapp/>

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Vendors are encouraged to visit the APS website periodically to view outstanding solicitations and register as a supplier with the Georgia Procurement Registry.

4.6 INDEMNIFICATION

The vendor shall indemnify, hold harmless and defend the Board, its agents, servants and employees from and against any and all claims, liability, losses, charges, expenses (including attorney fees) and / or cause of action, which may arise from any negligent act, or omission of the vendor, its agents, servants, or employees in the performance of services under this contract.

The vendor further agrees to indemnify, hold harmless and defend the Board, its agents, servants and employees from and against any claim, demand, liability loss, charges, expenses (including attorney fees) and or cause of action of whatever kind or nature arising out of any conduct or misconduct of the vendor not included in the paragraph above and for which the board, its agents, servants or employees are alleged to be liable.

Nothing contained herein is intended to be a waiver in any respect whatsoever of the Board's right to assert under any circumstances whatsoever its claims of governmental and or official immunity from any liability or damages asserted against it by any natural person or entities created by law.

4.7 INSURANCE

Upon receipt of Intent to Award, vendor shall provide a current certificate of insurance as required within five (5) days after notification issued by the APS Purchasing and Warehouse Operations Services Department.

4.7.1 The following general insurance requirements apply to any and all work under this contract by all vendors and subcontractors of any tier.

4.7.1.1 Any and all insurance required by this contract with each and any and all insurance required by this contract shall be maintained during the entire length of this contract, including any extensions thereto, and until all work has been completed to the satisfaction of APS. Any and all insurance must be on an occurrence basis.

4.7.1.2 No vendor or subcontractor shall commence work under a contract until all insurance requirements contained within the solicitation have been complied with and until evidence of all insurance requirements in each and every contract with each and every subcontractor of any tier and shall require the same to comply with all such requirements.

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- 4.7.1.3 APS shall be covered as an Additional Insured under any and all insurance required by this contract. Confirmation of this shall appear on all certificates of insurance and on any and all applicable policies. The title of the awarded contract shall also appear on any and all applicable policies.
 - 4.7.1.4 APS shall be given no less than thirty (30) days' notice of cancellation. APS shall be given no less than thirty (30) days prior written notice of any material change of any insurance required under this contract. The Atlanta Public Schools shall be given written notice of renewal of coverage not less than thirty (30) days prior to the expiration of any particular policy.
 - 4.7.1.5 Each and every insurance agent shall warrant when signing the certificate of insurance that he is acting as an authorized representative on behalf of the company or companies affording insurance coverage under the contract and that he or she is licensed by the State of Georgia to conduct insurance business in the State of Georgia and that the companies affording insurance coverage are currently licensed by the State of Georgia and are currently in good standing with the Commissioner of Insurance for the State of Georgia.
 - 4.7.1.6 Any and all companies providing insurance required by this contract shall meet the minimum financial security requirements as set forth below. The rating for each company must be indicated on the certificate of insurance. For all contracts, regardless of risk, companies providing insurance under this contract must have a current:
Best's Rating not less than A, and
Best's Financial Size Category not less than Class VII
 - 4.7.1.7 In the event the vendor neglects, refuses, or fails to provide insurance required by the contract documents, or if such insurance is canceled for any reason, APS shall have the right, but not the duty, to procure the same, and the cost thereof shall be deducted from monies then due or thereafter to become due to the vendor or APS shall have the right to cancel the contract.
- 4.7.2 Workers' Compensation and Employer's Liability Insurance
The vendor shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits. Such insurance is to cover each and every employee who is or may be engaged in work under this contract.

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<u>Workers' Compensation</u>	<u>Statutory</u>
<u>Employer's Liability</u>	
(1) Bodily Injury by Accident	\$100,000 each accident
(2) Bodily Injury by Disease	\$100,000 each employee
(3) Bodily Injury by Disease	\$500,000 policy limit
This requirement does not apply to any business that regularly has in service less than three employees in the same business within the state of Georgia.	

4.7.3 Comprehensive General Liability Insurance

The vendor shall procure and maintain Comprehensive Insurance in an amount not less than \$1,000,000 for bodily injury and property damage combined single limit. The following specific extensions of coverage shall be provided and indicated on the certificate of insurance:

- 4.7.3.1 Comprehensive Form
- 4.7.3.2 Contractual Insurance
- 4.7.3.3 Personal Injury
- 4.7.3.4 Broad Form Property Damage
- 4.7.3.5 Premises – Operations
- 4.7.3.6 Completed Operations

This coverage shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under this contract. Policy coverage must be on an occurrence basis.

4.7.4 Automobile Liability Insurance

The vendor shall procure and maintain Automobile Liability Insurance in an amount not less than \$1,000,000 for bodily injury and property damage combined single limit. The following extensions of coverage shall be provided and indicated on the certificate of insurance.

- (1) Comprehensive Form
- (2) Owned, hired, leased and non-owned vehicles must be covered.
If the vendor does not own any vehicles in the corporate name, non-owned vehicles coverage shall apply and must be endorsed on either the vendor's personal automobile policy or the Comprehensive General Liability coverage required under this contract.

4.7.5 Umbrella Liability Insurance

The vendor shall procure and maintain Umbrella Liability Insurance in an amount not less than \$1,000,000 per occurrence / \$1,000,000 aggregate.

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4.8 CONTRACT AWARD

Typically a contract is awarded to the responsible Offeror whose proposal is determined, at the discretion of APS, to be the most advantageous to APS. APS reserves the right to refuse to award a contract to any Offeror, however.

4.9 LOCAL PREFERENCE

In order to encourage and promote Atlanta Public Schools contracting opportunities with local businesses, formal solicitation processes may give preference to proposals (RFP's) and bids (IFB's) from local businesses based on the following rules. Local preferences are prohibited when federal funds are the source of funding. Local businesses that wish to receive preferential consideration shall submit a copy of their Occupation Tax Registration Certificate issued by Clayton, Cobb, DeKalb, Fulton or Gwinnett counties or by a city government located with the five-county metro area (e.g. Atlanta, Decatur, Marietta) covering the last 12 month period to certify qualification or the preference as part of each proposal or response.

4.10 NON-DISCRIMINATION

The vendor agrees to not discriminate against any person or persons in employment or refuse to continue the employment of any person or persons, because of such person's or persons' race, color, religion, gender, national origin, age, veteran status, disability, familial status or sexual orientation.

4.11 PROTESTS

Written protests relative to the specifications or the solicitation document shall be filed not later than five (5) working days prior to requested due date. Other written protests shall be filed not later than five (5) working days after requested due date, or if the written protest is based on subsequent action of the APS, not later than five (5) working days after the aggrieved person knows or should have knowledge, of the facts giving rise to the protest. Written protests are considered filed when received by the Executive Director of Purchasing and Warehouse Operations Services. Protests that are not filed in a timely manner, as set forth above will not be considered.

4.12 TAXES

APS is exempt from all state sales tax and federal excise tax. These taxes shall not be included in pricing.

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4.13 COMPLIANCE WITH APPLICABLE STATE, FEDERAL AND LOCAL LAW

The vendor shall at its own expense, obtain all necessary permits, give all notices, pay all license fees and taxes, and comply with all applicable State, Federal and local laws, ordinances, rules and regulations. The vendor shall agree that in the performance of the contract, the vendor will comply with all local agreements which the vendor has made with any association, union or other entity with respect to wages, salaries and working conditions, so as not to cause inconvenience, picketing or work stoppage.

4.14 COMMENCEMENT, EXECUTION AND COMPLETION

The vendor shall commence work under a contract at the time specified in the purchase order or written notice from the owner and shall execute and complete such work with competence, faithfulness and energy.

4.15 ASSIGNMENT OF CONTRACT

The vendor shall not assign, transfer, delegate or in any way give its rights, title or interest therein, or its power to execute such contract to another person, company or corporation, without prior written consent of the Atlanta Public Schools.

4.16 MODIFICATIONS TO CONTRACT ONCE EXECUTED

Terms and conditions may be added, modified and deleted upon mutual agreement between APS and the vendor provided that such terms and conditions remain within the scope and original intent of the solicitation. Any and all modifications shall be expressed in writing and approved by the Executive Director of Purchasing and Warehouse Operations Services prior to the enactment of such modifications.

4.17 DELIVERY

Prices, quotes and deliveries are to be FOB destination, freight prepaid and shall require inside delivery unless otherwise specified in the solicitation documents. Title and risk of loss shall pass to APS upon inspection and acceptance at its designated point of delivery, unless otherwise specified in the solicitation documents.

4.18 FISCAL FUNDING

Notwithstanding any other provision of this agreement, the parties hereto agree that the charges hereunder payable to the vendor by the APS are funded solely from appropriations received by APS.

In the event such appropriations are determined by the Chief Financial Officer/Comptroller of APS to no longer exist or to be insufficient with respect to

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the charges payable hereunder, this agreement shall terminate without further obligation of APS at the end of any fiscal period (hereinafter referred to as "Event"). In such event, the Executive Director of Purchasing and Warehouse Operations Services shall certify to the vendor the occurrence thereof.

4.19 PAYMENT

Payment for a single line item or partial service when the item or service has been satisfactorily delivered may be made within thirty (30) days from either the date of delivery or the receipt of satisfactory invoice in duplicate, whichever occurs last (unless otherwise noted in the documents).

4.20 REPORTS

The vendor shall furnish all reports as requested by the owner.

4.21 TERMINATION

APS reserves the right, at its discretion, to terminate for convenience any contract awarded.

In the event any property or service to be furnished by the offeror under a contract or purchase order should for any reason not conform to the requirements for this solicitation, APS may reject the property or service and terminate the contract for default. With specific instructions by the Executive Director of Purchasing and Warehouse Operations Services, the vendor shall immediately remove the rejected property and replace with such property or services conforming to the requirements of this solicitation without expense to the APS.

If the contract is terminated for default, APS may procure such property or services from other sources and shall have the absolute right to deduct from any monies due to the vendor or that may thereafter become due to the vendor, the difference between the contract price and the actual cost of the property or service to be replaced or substituted. If monies due to the vendor are not sufficient to satisfy the debt, the vendor shall pay any monies due to APS within thirty (30) days of written notice. The price paid by APS in such event shall be the prevailing market price at the time the substitute purchase is made.

4.21.1 Immediate Termination.

This Contract will terminate immediately and absolutely if the District determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the District cannot fulfill its obligations under the Contract, which determination is at the District's sole discretion and shall be conclusive. Further, the District may terminate the Contract

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for any one or more of the following reasons effective immediately without advance notice:

- i. In the event the Vendor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
- ii. The District determines that the actions, or failure to act, of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
- iii. The Vendor fails to comply with confidentiality laws or provisions; and/or
- iv. The Vendor furnished any statement, representation or certification in connection with the Contract or the bidders' process which is materially false, deceptive, incorrect or incomplete.

4.21.2 Termination for Cause.

The occurrence of any one or more of the following events shall constitute cause for the District to declare the Vendor in default of its obligations under the Contract:

- i. The Vendor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the District's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Vendor;
- ii. The District determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
- iii. The Vendor fails to make substantial and timely progress toward performance of the Contract;
- iv. The Vendor becomes subject to any bankruptcy or insolvency proceeding under federal law or APS's Board of Education policy or State law to the extent allowed by applicable federal or county or state law including bankruptcy policy; the Vendor terminates or suspends its business; or the District reasonably believes that the Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- v. The Vendor has failed to comply with applicable federal law, APS Board of Education policy and State laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- vi. The Vendor has engaged in conduct that has or may expose the District to liability, as determined in the District's sole discretion; or
- vii. The Vendor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the District or a third party.

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4.21.3 Notice of Default.

If there is a default event caused by the Vendor, the District shall provide written notice to the Vendor requesting that the breach or noncompliance be remedied within the period of time specified in the District's written notice to the Vendor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the District may:

- i. Immediately terminate the Contract without additional written notice; and/or
- ii. Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Vendor; and/or,
- iii. Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

4.21.4 Termination for Convenience.

Following thirty (30) days' written notice, the District may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Vendor. Following termination upon notice, the Vendor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods and services provided under the Contract to the District up to and including the date of termination.

4.21.5 Termination Due to Change of Law.

The District shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Vendor as a result of any of the following:

- i. The District's authorization to operate is withdrawn or there is a material alteration in the programs administered by the District; and/or
- ii. The District's duties are substantially modified.

4.21.6 Payment Limitation in Event of Termination.

In the event of termination of the Contract for any reason by the District, the District shall pay only those amounts, if any, due and owing to the Vendor for goods and services actually rendered up to and including the date of termination of the Contract and for which the District is obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Vendor's claim. This provision in no way limits the remedies available to the District under the Contract in the event of termination. The District shall not be liable for any costs incurred by the Vendor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.

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4.21.7 The Vendor's Termination Duties.

Upon receipt of notice of termination or upon request of the District, the Vendor shall:

- i. Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the District may require;
- ii. Immediately cease using and return to the District, any personal property or materials, whether tangible or intangible, provided by the District to the Vendor;
- iii. Comply with the District's instructions for the timely transfer of any active files and work product produced by the Vendor under the Contract;
- iv. Cooperate in good faith with the District, its employees, agents and vendors during the transition period between the notification of termination and the substitution of any replacement vendor; and
- v. Immediately return to the District any payments made by the District for goods and services that were not delivered or rendered by the Vendor.

4.22 EQUAL EMPLOYMENT OPPORTUNITY CLAUSE REQUIREMENTS

4.22.1 EEO CLAUSE REQUIREMENT

Unless otherwise authorized by law, all contracts and purchase orders entered in APS shall incorporate an equal employment opportunity ("EEO") clause. Compliance with this section shall be considered met when the EEO clause is set forth in an exhibit attached to the contract and appropriate language incorporating the exhibit into the contract is set forth therein.

4.22.2 NOTICE

The EEO clause shall be included as a specification and shall appear on all invitations for bids, requests for proposals, and all other solicitations, contracts and purchase orders prepared and issued by the department of purchasing.

4.22.3 FEDERAL GUIDELINES ADOPTED

The federal guidelines, relating to nondiscrimination in employment by government contractors and subcontractors promulgated by Executive Order No. 11246 of September 29, 1965, as amended by Executive Order No. 11375 of October 13, 1967, sections 202, 203, and 204 of part II of such orders, are hereby entering into contracts with the APS, unless otherwise authorized by law, shall comply with the same.

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4.22.4 FAILURE TO INCORPORATE EEO CLAUSE

APS shall have the right to reject any or all bids or proposals and shall not enter into contract or purchase order with any person who fails to comply with the Equal Employment Opportunity Requirements of this section, and with the requirements of the section titled Equal Employment Opportunity.

4.22.5 DURING THE PERFORMANCE OF THIS AGREEMENT, SAID VENDOR AGREES AS FOLLOWS:

- i. The vendor shall not discriminate against any employee, or applicant for employment, because of race, religion, color, sex, national origin marital status, age or disability. As used here, the words 'shall not discriminate' shall mean and include without limitation the following: "Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off and terminated. The vendor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.
- ii. The vendor shall, in all solicitations or advertisements for employees, placed by or on behalf of the vendor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.
- iii. The vendor shall send to each labor union or representative of workers with which the vendor may have a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of the vendor's commitments under the Equal Employment Opportunity Program of APS and under the policy of its Board of Education shall post copies of the notice in conspicuous places available to employees and applicants for employment. The vendor shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.
- iv. The vendor shall furnish all information and reports required by the Procurement Department and shall permit access to the books, records, and accounts of the vendor during normal business hours by the Procurement Department for the purpose of investigation so as to ascertain compliance with the vendor's duty of non-discrimination.
- v. The vendor shall take such action with respect to any subcontractor as APS may direct as a means of enforcing the provisions of paragraphs (a) through (h) herein, including penalties and sanctions for noncompliance.
- vi. The vendor and its subcontractors, if any, shall file compliance reports at reasonable times and intervals with APS in the form and to the

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- extent prescribed by the Procurement Department. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the vendor and its subcontractors.
- vii. The vendor shall include the provisions of paragraphs (a) through (h) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.
 - viii. A finding, as hereinafter provided, that a refusal by the vendor or subcontractor to comply with any portion of this program as herein provided and described, may subject the offending party to any or all of the following penalties:
 - (1) Withholding from the vendor in violation all future payments under the involved contract until it is determined that the vendor or subcontractor is in compliance with the provisions of the contract.
 - (2) Refusal of all future bids for any contract with the APS or any of its departments or divisions until such time as the vendor or subcontractor demonstrates that there has been established and there shall be carried out all of the applicable provisions of the relevant Federal executive orders and equal employment requirements incorporated herein.
 - (3) Cancellation of the public contract.
 - (4) In a case in which there is substantial or material violation of the compliance procedure herein set forth or as may be provided by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of contractors.

4.22.6 EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE STATEMENT

In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992. (Voice) Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

4.22.7 EQUAL OPPORTUNITY

No person or firm shall be discriminated against because of age, race, color, religion, national origin, veteran status, gender, disability, familial status or sexual orientation in the award of APS contracts. Further, the

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offeror agrees not to discriminate on the basis of age, race, color, religion, national origin, veteran status, gender, disability, familial status or sexual orientation in the performance of this contract.

4.22.8 INCLUSIVE PRACTICES

All APS contracts shall be awarded with the objective of upholding Inclusive Practices in APS' competitive solicitation process. APS is committed to the participation of Minority/Women Owned Business Enterprises (M/WBEs) in its contracting programs. An M/WBE is a business that is at least 51% owned and controlled by members who are minorities and/or women, the minority/women ownership is real, substantial, and continuing, and the minority/women owners have and exercise the authority to independently control the day-to-day business decisions. For the purposes of this policy, minorities include: African Americans, Asian Americans, Hispanic Americans, Native Americans and non-Hispanic white women. "Inclusive Practices" are categorized into eight types: (1) vision-making; (2) goal-setting; (3) public tracking and disclosure of contractor and subcontractor data; (4) accountability and enforcement; (5) outreach and increasing access for contractors and subcontractors; (6) participation and incentives; (7) education and training; and (7) financial assistance. APS encourages all offerors to identify which if any of these types of inclusive practices they utilize.

4.22.9 MBE/WBE PARTICIPATION

While there is no mandatory M/WBE goal associated with this solicitation, all offerors are strongly encouraged to take active steps to maximize the participation of M/WBEs in this contract. To monitor and evaluate M/WBE participation in its contracting programs, APS is collecting information on the efforts made by offerors in securing M/WBE participation for this contract. All offerors are required to provide information relating to these voluntary efforts (**Exhibit A**) and return it with the offer.

*A failure to complete and return **Exhibit A** may result in the offer being deemed as nonresponsive.*

If subcontractors are utilized, offerors are encouraged to advertise subcontracting opportunities with trade associations including the Dodge Plan Room for Construction projects and/or minority and women-oriented media and associated trade associations.

After the contract is awarded, APS will require the selected offeror to identify M/WBE subcontractors who will be utilized on the project, and expenditures to subcontractors who are M/WBE on invoices or pay

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application requests (as applicable) to assist APS in monitoring and evaluating M/WBE participation. The request will include the following:

M/WBE SUBCONTRACTOR UTILIZATION

Name of subcontractor:	Address and phone number:	Type of work to be performed:	M/WBE ownership (see code below)	Percentage of total bid amount:

M/WBE Business Enterprise Codes:

- AFA: African American Business Enterprise
HIA: Hispanic American Business Enterprise
ASA: Asian American Business Enterprise
NAA: Native American Business Enterprise
WBE: Women/Female Business Enterprise

5.0 ADDITIONAL GENERAL TERMS AND CONDITIONS

By submitting a response to this request, the offeror accepts the responsibility of reading, understanding and abiding by the additional General Terms and Conditions below:

5.1 DEBARMENT AND SUSPENSION VERIFICATION

Institutions shall solicit offers from, award contracts to, and consent to subcontracts with responsible vendors and/or principals only. The serious nature of debarment and suspension requires that sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Institutions shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4.

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By signing this agreement, the Vendor is testifying that they are not debarred, suspended or has any ineligible or voluntary exclusions with the U.S. Department of Agriculture or any other Federal or State Agency. All responses will be verified. Vendor certifies that the Vendor and/or any of its subcontractors or principals have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or any agency of the Federal government or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Vendor will immediately notify the District if Vendor is debarred or placed on the Consolidated List of Debarred, Suspended, and Ineligible Vendors by a federal entity.

5.2 CLEAN AIR/ CLEAN WATER STATEMENT

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)) Clean Air and Water Certification. Vendor certifies that none of the facilities it uses to produce goods provided under the Contract are on the Environmental Protection Authority (EPA) List of Violating Facilities. Vendor will immediately notify the District of the receipt of any communication indicating that any of Vendor's facilities are under consideration to be listed on the EPA List of Violating Facilities.

5.3 CIVIL RIGHTS STATEMENT

In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age and disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

5.4 RECORD RETENTION AND ACCESS CLAUSE

The Vendor shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the District Nutrition Program throughout the term of the Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records.

The Vendor shall permit the Auditor of the State of Georgia or any authorized representative of the District, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Vendor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours.

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The Vendor shall not impose a charge for audit or examination of the Vendor's books and records. If an audit discloses incorrect billings or improprieties, the State and/or the District reserves the right to charge the Vendor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

5.5 ENERGY POLICY AND CONSERVATION ACT STATEMENT

Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163, 89 Stat.871).

5.6 ACCESSIBILITY REQUIREMENTS – TECHNOLOGY SOLICITATIONS ONLY

Vendor should demonstrate that each software and/or hardware confirms to the accessibility guidelines established by the World Wide Web Consortium's Web Content Accessibility Guidelines 2.0 (WCAG 2.0).

Vendor should demonstrate that each software and/or hardware confirms to the accessibility guidelines established by Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998. Section 508 is the section of the 1973 Rehabilitation Act that states that all electronic and information technology procured, used, or developed by the federal government after June 25, 2001, must be accessible to people with disabilities. Affected technology includes hardware such as copiers, fax machines, telephones, and other electronic devices as well as application software and website.

6.0 VENDOR REQUIREMENTS

- 6.1 APS policy requires that all contractors, consultants, or vendors providing services on APS premises be fingerprinted and submit to a criminal record check initiated by APS prior to providing services to APS. There is a fee of \$45.00 per individual payable by money order associated with the background check. The payment of this fee is the sole responsibility the vendor, consultant, vendor or the employing company. Any contract awarded pursuant to this solicitation is contingent upon compliance with this requirement and a satisfactory background check as determined by APS.
- 6.2 Vendor must have proven experience in providing the goods specified in this solicitation.

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- 6.3 Vendor must have adequate equipment, qualified personnel and the financial ability to provide the services specified in this proposal.

- 6.4 Use of Subcontractors
 - 6.4.1 If subcontractors will be used in the performance of this contract, vendor must complete and submit with its response the Primary Vendor/Subcontractor Utilization form.
 - 6.4.2 Vendor shall not assign any duties to perform services nor to provide goods to APS under this contract to a subcontractor that is not listed in vendor's response to this solicitation.
 - 6.4.3 If a subcontractor is removed from the contact at any time during the term, vendor must notify APS Procurement Services in writing with name of subcontractor, reason for removal and effective date.
 - 6.4.4 If vendor desires to add a subcontractor at any time during the term of the contract, vendor must submit to APS Procurement Services in writing the following information on the subcontractor; company name, address, telephone and fax number, the service they will be providing and proposed effective date. Subcontractor may not begin providing service until approved by APS.
 - 6.4.5 Vendor is responsible for ensuring that all subcontractors who provide goods or services under this contract comply with the terms and conditions of the contract.
 - 6.4.6 Vendor shall give APS immediate notice in writing of any claim, action or suit filed against vendor by any subcontractor.
 - 6.4.7 APS reserves the right to require that a subcontractor be removed from the contract.

- 6.5 Vendor must complete and submit with their proposal the applicable documentation related to Georgia House Bill 87 (commonly known as the "Illegal Immigration Reform and Enforcement Act of 2011").

- 6.6 Information on Georgia House Bill 87 may be viewed at: <http://www.uscis.gov/e-verify>

- 6.7 Failure to provide the required Georgia House Bill 87 documentation may result in the offeror's response to the solicitation being deemed non-responsive and ineligible for evaluation.

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- 6.8 The Atlanta Board of Education desires that the Atlanta Public Schools operate in the most ethical and conscientious manner possible. Employees are expected to not only avoid any direct conflict of interest but also to avoid even the appearance of impropriety. In an effort to comply with Board policy and to ensure that our relationship with vendors is above reproach, vendors are prohibited from giving any APS employee any gift, favor, loan, reward, political contribution, gratuity, entertainment, transportation, lodging, or meal except those of nominal value (less than \$50.00), which must be disclosed to the immediate supervisor and the Department of Internal Auditing. Advertising items and instructional products that are widely distributed may be accepted. (Refer to Policy GAG and GAJB).
- 6.9 All contractors and vendors desiring to do business with the APS and/or to participate on APS contracts shall be required to comply with Board policy GAG, Staff Conflict of Interest. All vendors and contractors doing business with the APS shall provide all persons with equal opportunity without regard to race, color, sex, religion, national origin, marital status, sexual orientation, age, or disability.
- 6.10 Vendors shall not contact APS Board members individually for the purpose of soliciting a purchase or contract between the time a request for proposal, request for qualifications or invitation to bid is formally under development and a recommendation is made by the administration to the Board; if applicable. If a vendor violates this prohibition during this time frame, consideration of the vendor for award shall be invalidated. Board members shall be notified of possible violations and actions taken.

7.0 SUBMISSION REQUIREMENTS

- 7.1 Proposal shall be submitted online via the following link:
<https://aps.bonfirehub.com/projects/view/14321>.
- 7.2 The following ***required documents*** must be submitted with your proposal:
1. Offeror affirmation form (required for valid submission)
 2. Offeror information form (required for valid submission)
 3. Offeror reference form(required for valid submission)
 4. Joint venture affidavit (check the appropriate box on the form)
 5. Primary vendor / subcontractor utilization (check the appropriate box on the form)
 6. Promise of non-discrimination (required for valid submission)
 7. Contractor Affidavit of Compliance under O.C.G.A 13-10-91(b) (1)
 8. Subcontractor Affidavit of Compliance under O.C.G.A 13-10-91(b) (3), if applicable.

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9. Sub-subcontractor Affidavit of Compliance under O.C.G.A 13-10-91(b) (4), if applicable
 10. Affidavit of Exception, if applicable
 11. Local Preference Form
 12. Description of Voluntary Outreach (Exhibit A)
 13. Solicitation Checklist
 14. Occupation Tax Registration Certificate, (if applicable, refer to section 9 Local Preference)
 15. Copy of local or state business license or permit.
 16. Price Proposal Form (Exhibit B)
- 7.3 Proposals, in the format requested in 8.1 (Online Submission) and 8.2 (Required Documents) shall be submitted online.
- 7.4 Any proposal received online after the designated time and date due will not be considered by APS. APS will **only** accept online submissions for this RFP. Proposals can be submitted on line at: <https://aps.bonfirehub.com/projects/view/14321> Proposals submitted after the proposal close date will not be accepted. Note: Any proposal submitted in any other format (email, paper, fax, mail, etc.) will not be accepted for any reason.
- 7.5 Proposals cannot be withdrawn after they have been submitted online unless offeror makes a request in writing to the Executive Director of Purchasing and Warehouse Operations Services prior to the time set for receiving bids, or unless the Executive Director of Purchasing and Warehouse Operations Services fails to accept or reject the bids within one hundred and twenty (120) days after the date fixed for receiving said proposals.
- 7.6 Proposals which contain irregularities of any kind and/or do not comply fully with requirements stated in the solicitation documents may be rejected at the discretion of the Executive Director of Purchasing and Warehouse Operations Services. APS shall not be liable for any costs associated or incurred by offeror in conjunction with preparation of solicitation responses.
- 7.7 APS reserves the right to waive any minor informality or error in the solicitation or offerors proposal which will not adversely affect competition.
- 7.8 By submitting a response the offeror certifies that this proposal is made without prior understanding, agreement or connection with any corporation, company or person submitting a bid for the same service and is in all respects fair and without

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collusion or fraud; that collusive pricing is understood to be a violation of state and federal law and can result in fines, prison sentences and civil damage awards. It is further agreed that offeror agrees to abide by all conditions of the solicitation, notice of award and/or purchase order(s) of APS and that the person signing this bid is duly authorized to bid on behalf of the offeror.

- 7.9 Failure to provide an online submission with correct information listed may result in rejection of the proposal. If further information is required to demonstrate responsibility such as providing copies of licenses or permits (other than those mentioned in 7.2, certificates, etc., the offeror will be notified, in writing and given five (5) days from notification to supply such information.
- 7.10 Offeror shall submit online proposal with a response that fully answers each question list on the online submission. Offeror must reference each section as listed below.

Section 1 – Company Qualifications and Experience

- a. Provide a brief history of the company including the number of years in business providing instructional materials and supplies.
- b. Provide a brief general narrative description of the goods you are offering in your proposal. Reference the category item number listed in section 3.1.
- c. Provide three (3) references from K-12 school districts for which your company is currently providing instructional materials and supplies similar to the specifications of this solicitation. Provide the following information for each reference:
 1. Name and address of organization
 2. Name and title of primary contact with telephone number, fax number and e-mail address.
 3. Description of the goods and services provided including dates
 4. Provide the names and responsibilities of key staff expected to be assigned to support APS. Indicate who will serve as the local account representative for APS.

Section 2 – Methodology / Operations

- a. Describe your experience (if applicable) with vendor hosted online catalogs for customers. Provide user guide, screen shots, etc. vendor hosted online catalogs you can offer APS.
- b. Describe your reporting capabilities and provide sample reports that will be available to APS.
- c. Describe the training and customer support that will be available to APS.
- d. Describe your shipping, exchange and return policies and procedures.

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Section 3 - Pricing

- a. Provide pricing on the APS price proposal form which is a separate Word spreadsheet. (***Exhibit B***).
- b. Provide details pricing structure including but not limited to discounts and pricing adjustments/updates.

8.0 EVALUATION

- 8.1 To be eligible for consideration, proposals shall be presented in accordance with the instructions of this solicitation and within the timeframe specified. It shall be the responsibility of the awarded vendor to meet all specifications and guidelines set forth herein.
- 8.2 An APS evaluation committee will evaluate each proposal properly submitted. APS, at its sole discretion, determines the criteria and process whereby proposals are evaluated and awarded. No damages shall be recoverable by any challenger as a result of the determinations or decisions by APS.
- 8.3 APS reserves the right during the evaluation process to contact offerors who submit proposals and request additional information or clarification necessary to complete the evaluation.
- 8.4 After the closing date and time, Procurement Services will conduct an administrative review of all proposals received to determine responsiveness. Proposals that are deemed to be responsive will be submitted to the evaluation committee for review. Proposals that are deemed to be non-responsive will not be evaluated or considered for award.
- 8.5 Although proposals that do not contain pricing information will not be considered for an award, Atlanta Public Schools reserves the right to evaluate proposals on the non-price related criteria only. Proposals that do not meet at least 70% of the non-price criteria may not have price evaluated as a criterion. APS will evaluate all proposals and reserves the right to develop a competitive range. The competitive range is defined as a group for competitive negotiation, as determined during the evaluation process, composed of only those proposals that are considered to have a reasonable chance of being selected for an award and who are, therefore, chosen for additional discussions and negotiations. Proposals not in the competitive range are given no further consideration.

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- 8.6 Proposals will be evaluated on the following criteria:

Criteria	Point Possible
Company qualifications and experience	100
Methodology / operations	500
Pricing	400
Total	1000

In order to be a finalist vendors must score a minimum of 70% of the non-price points possible (420 out of 600). Vendors who qualify as local vendors will receive a “Local Preference” addition of 5 points added to their final score.

- 8.7 The formula to evaluate price is as follows:
(Lowest price / price of proposal being evaluated) x points possible for price = score
- 8.8 APS reserves the right to request a best and final offer (BAFO) from offerors during the evaluation process.
- 8.9 APS reserves the right to negotiate terms and conditions, scope of work, price and/or non-price terms and conditions with selected vendor(s) to meet the needs of the district.
- 8.10 Negotiations may be:
- Concurrent which may be conducted concurrently with multiple offerors or;
 - Exclusive which may be conducted with the offeror whose proposal is the overall highest rated.
- 8.11 Exceeding Available Funds
In the event the pricing submitted by (a vendor or vendors) exceeds available funds, APS reserves the right to negotiate an adjustment of price with the (vendor or vendors.)

9.0 AWARD

- 9.1 Please be advised that it is the policy of the Atlanta Public Schools that all contracts be awarded without regard to the race, color, sex, religion, national origin, marital status, sexual orientation, age, or disability of the offeror.

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- 9.2 This contract shall be for one (1) base term (of one year or less) with four (4) one-year options to renew at the sole discretion of the Superintendent of APS. The contract will be conditional upon the offeror's ability to comply with requirements set forth in the solicitation documents.
- 9.3 APS has selected as its owner's representative, Assistant Superintendent, Teaching and Learning Supervision of the contract will be performed by the owner's representative or his/her designee.
- 9.4 Offeror shall not provide goods or services until a purchase order has been issued by APS's Procurement Services Department.
- 9.5 The original copy of itemized invoices must be submitted to:
Atlanta Public Schools
Accounts Payable Department
P. O. Box 4659
Atlanta, GA 30302
- 9.6 Invoices must include the APS purchase order number and the "ship to" location where the goods and/or services were delivered that do not include this information will be returned to the vendor
 - a. Separate invoices are required for each purchase order.
 - b. The accounts payable department may be contacted at 404-802-2400.
- 9.7 Vendor Payment
APS may make payments to vendors via one of the following:
 - a. Automated Clearing House (ACH)
 - b. Check
 - c. Purchasing Card
- 9.8 At the end of each contract term, the awarded vendor may request a price re-determination. Price re-determination requests must be submitted to the Procurement Services Contract Administrator ninety (90) days prior to the contract term expiration date accompanied by justification of price re-determination. APS may, at its discretion:
 - a. Accept the proposed price re-determination.
 - b. Reject the proposed price re-determination.
 - c. Suggest an alternative price re-determination.

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- 9.9 If APS rejects a proposed price re-determination the awarded vendor may:
- Continue with the existing pricing.
 - Suggest an alternative price re-determination.
 - End the contract.

- 9.10 APS reserves the right to reject all proposals when such action is in the best interest of the district.

- 9.11 Awards will be posted on the APS website at:
- <http://www.atlanta.k12.ga.us>
 - Department and Services
 - Procurement
 - Contracts Vendors

10.0 LOCAL PREFERENCE

- 10.1 In order to encourage and promote Atlanta Public Schools contracting opportunities with local businesses, formal solicitation processes may give preference to proposals and bids from local businesses based on the following rules.

- 10.2 Local preferences are prohibited when federal funds are the source of funding.

- 10.3 Local businesses that wish to receive preferential consideration shall submit a copy of their Occupation Tax Registration Certificate issued by Clayton, Cobb, DeKalb, Fulton or Gwinnett counties or by a city government located with the five-county metro area (e.g. Atlanta, Decatur, Marietta) covering the last 12 month period to certify qualification or the preference as part of each proposal or response.

11.0 CONTRACT

- 11.1 By submitting a response to this solicitation, the offeror affirms that it has read and will accept all provisions of the contract as written and attached to this solicitation. Offeror also understands that these provisions are non-negotiable and that the contract is not legally binding upon the parties until executed by APS and offeror.

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Atlanta Public Schools
Procurement Services
130 Trinity Ave., S. W.
Atlanta, Georgia 30303

NON-SUBMITTAL RESPONSE FORM

RFP Name: Instructional Materials and Supplies

RFP Number: 2019-0062

NOTE TO VENDOR:

If your company's response is a "non-submittal", the Atlanta Public Schools is very interested in the reason for such response since APS desires to ensure that the procurement process is fair, non-restrictive and attracts maximum participation from interested companies. We therefore, appreciate your responses to this non-submittal response form.

Please complete and fax this form to: (404) 802-1506

Please indicate your reason for responding with a "non-submittal":

- Unable to meet the requirements for this solicitation.
- Unable to provide the goods or services specified in this solicitation
- Unable to meet time frame established for start and or completion of project.
- Received too late to submit a bid. Received on: _____
- Please remove our company's name from receiving similar type solicitations.

Other (Please explain):

Your response will be reviewed and placed in the solicitation file. Your input will assist APS in determining changes necessary to increase participation in the solicitation process.

Company name

Company address

(_____) _____
Company telephone number

(_____) _____
Company fax number

Primary company contact e-mail address

Authorized company official signature

Title

Date

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OFFEROR AFFIRMATION FORM

(This form must be completed and returned with your response)

Company Name: _____

RFP Name: Instructional Materials and Supplies

RFP Number: 2019-0062

After careful examination of the solicitation document in its entirety, Instructional Materials and Supplies, 2019-0062 and any addendum(s) issued, the undersigned proposes to satisfy all requirements in accordance with said documents.

For consideration of this proposal, the undersigned hereby affirms that:

1. He/she is a duly authorized official of the offeror,
2. No changes were made to the original RFQu document,
3. The proposal is being submitted on behalf of the offeror in accordance with any terms and conditions set forth in this document,
4. The offeror will accept any awards made to it as a result of the proposal submitted herein for a minimum of one hundred and twenty (120) calendar days following the date of submission,
5. The offeror will accept the terms and conditions set forth in the contract template attached hereto.
6. The offeror will accept the terms and conditions set forth in the APS general terms and conditions.

It is the supplier's responsibility to check the APS Outstanding Solicitations website for any addenda, responses to supplier questions, or other communications. Supplier acknowledges and incorporates each applicable Addenda number listed below in their response:

Check all that apply: No. 1 _____, No. 2 _____, No. 3 _____, No. 4 _____, No. 5 _____

No Addenda _____

If notified in writing by mail or delivery of the acceptance of the award, the undersigned agrees to furnish and deliver to the assigned Procurement officer within five (5) days of the request, a certificate of insurance indicating the coverage's specified within this solicitation.

A contract shall be established which will set forth the terms of this agreement. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of Georgia.

Nondiscrimination in Employment: We, the supplier of goods, materials, equipment or services covered by this bid or contract, have not discriminated in the employment, in any way, against any person or persons, or refused to continue the employment of any person or persons on account of their race, color, sex, religion, national origin, marital status, sexual orientation, age, or disability.

Respectfully submitted,

Company Name

Address

Authorized Company Representative Name

Authorized Company Representative Signature

Title

Date

(_____)
Business Telephone Number

(_____)
Fax

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OFFEROR INFORMATION FORM

(This form must be completed and returned with your response)

Full Company Legal Name: _____

Street Address: _____

City, State, Zip Code: _____

Contact Name for Solicitation: _____ Title: _____

Telephone: (____) _____ Fax: (____) _____ E-mail: _____

Contact Name for Contract: _____ Title: _____

Telephone: (____) _____ Fax: (____) _____ E-mail: _____

Contact Name for Purchase Order's: _____ Title: _____

Telephone: (____) _____ Fax: (____) _____ E-mail: _____

Purchase orders may be delivered via e-mail or fax. Please indicate your preferred delivery method and provide an e-mail address or fax number where they should be sent.

E-mail _____ Fax (____) _____

Company Web Site: _____ State of Incorporation: _____

Taxpayer ID Number: _____ Duns #: _____

Check one of the following: Independently owned and operated: An Affiliate or Division of:

Company Name: _____
Address: _____

Does the company utilize an Affirmative Action Plan for Equal Employment Opportunity? Yes No

Has the company implemented a compliance program in accordance with the Americans with Disabilities Act? Yes No

Have any conditions or restrictions been placed on this proposal by the company that would cause it to be declared non-responsive? Yes No

If recommended for award will company provide proof of insurance as required? Yes No

Is the company currently debarred from doing business with any federal, state or local agency? If yes please provide details and submit on a separate sheet. Yes No

Has the company ever defaulted on a contract or been denied a contract due to non-ability to perform? If yes please provide details on a separate sheet. Yes No

Does the company accept payment by credit card? Yes No

Is the company registered as a vendor with Atlanta Public Schools? Yes No
If yes, please provide APD vendor number: _____

Is the company registered as a vendor with Atlanta Public Schools? Yes No
If yes, please attach a copy of your state of Georgia business license.

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OFFEROR REFERENCE FORM

(This form must be completed and returned with your response)

RFP Name: Instructional Materials and Supplies

RFP Number: 2019-0062

All references must be from customers for whom your company has completed work similar to the specifications of this bid. Note: do not use Atlanta Public Schools as a reference.

References for: _____
(Company Name)

1. Company: _____

Address, City, State, Zip: _____

Name/title of Contact Person: _____

Telephone : (_____) _____ Fax: (_____) _____

E-mail: _____

Provide the scope of work and date of project: _____

2. Company: _____

Address, City, State, Zip: _____

Name/title of Contact Person: _____

Telephone : (_____) _____ Fax: (_____) _____

E-mail: _____

Provide the scope of work and date of project: _____

3. Company: _____

Address, City, State, Zip: _____

Name/title of Contact Person: _____

Telephone : (_____) _____ Fax: (_____) _____

E-mail: _____

Provide the scope of work and date of project: _____

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JOINT VENTURE AFFIDAVIT

(This form must be completed and returned with your response)

Primary Vendor Name: _____

If this will not be a joint venture, check this box:

RFP Name: Instructional Materials and Supplies

RFP Number: 2019-0062

State of: _____

County of: _____

We, the undersigned, being duly sworn according to law, upon our respective oaths depose and say that:

1. The following named contractors/companies have entered into a joint venture for the purpose of carrying out all the provisions of the Contract for the above named solicitation:

Joint Venture Company "A"

Company Name _____ Federal ID No. _____

Address: _____

City: _____ State: _____ Zip: _____

Check all that apply:

†Sole Proprietorship

†Partnership

†Corporation

†N/A, other

Joint Venture Company "B"

Company Name _____ Federal ID No. _____

Address: _____

City: _____ State: _____ Zip: _____

Check all that apply:

†Sole Proprietorship

†Partnership

†Corporation

†N/A, other

2. The contractors/companies, under whose names we have affixed our respective signatures, have duly authorized and empowered us to execute this Joint Venture Statement in the name of and on behalf of such contractors for the purpose hereinbefore stated.

Under the provision of such Joint Venture, the assets of each of the contractors named in Paragraph 1 hereof, and in case any contractor so named above is in partnership, the assets of the individual members of such partnership, will be available for the performance of such Joint Venture and liable therefore and for all obligations incurred in connection therewith.

**Atlanta Public Schools
Instructional Materials and Supplies**

JOINT VENTURE AFFIDAVIT

This Joint Venture Statement is executed so that the named contractors/companies, as one organization, may under such joint venture, bid upon said contract, and be awarded the contract if they should become the successful bidder therefore, any bid, bond and agreement relating to joint venture and each and every contractor name herein, severally and jointly. Simultaneous with the execution of the contract, the contractors entering into this joint venture shall designate and appoint a project manager to act as their true and lawful agent with full power and authority to do and perform any and all acts or things necessary to carry out the work set forth in said contract.

The Joint Venture shall be known as: _____

Principal Office Address: _____

City: _____ State: _____ Zip: _____

Telephone: (_____) _____ Fax: (_____) _____

3. On a separate sheet provide the following information and reference the section number:

- A. Describe the capital contributions by each joint venture and accounting therefore.
- B. Describe the financial controls of the joint venture. Will a separate cost center be established? Which joint venture company will be responsible for keeping the books? How will the expenses be reimbursed? What is the authority of each joint venture company to commit or obligate the other?
- C. Describe any ownership, options for ownership, or loans between the joint ventures. Identify terms thereof.
- D. Describe the estimated contract cash flow for each joint venture company. .
- E. How and by whom will the on-site work be supervised?
- F. How and by whom will the administrative office be supervised?
- G. Which joint venture company will be responsible for material purchases including the estimated cost thereof? How will the purchases be financed?
- H. Which joint venture company will provide equipment? What is the estimated cost thereof? How will the equipment be financed?
- I. Describe the experience and business qualifications of each joint venture company.
- J. Submit a copy of all joint venture agreements and evidence of authority to do business in the State of Georgia as well as locally, to include all necessary business licenses.

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JOINT VENTURE AFFIDAVIT

In connection with any work that these firms, as a joint venture, might be authorized to perform in connection with the above captioned contract, we each do hereby authorize representatives of the APS, Department of Purchasing and Warehouse Operations Services, Office of Contract Administration, to examine, from time to time, the books, records and files to the extent that such relate to this APS solicitation.

We bind the contractors for whom we respectively execute this Joint Venture Statement in firm agreement with the APS, that each of the representations herein set forth is true.

Subscribed and sworn before me

this _____ day of _____ 20_____.

(A) _____

Name of Contractor/Company A

My commission expires: _____ By: _____ (L.S.)

Notary Public

Print Name

Subscribed and sworn before me

this _____ day of _____ 20_____.

(B) _____

Name of Contractor/Company B

My commission expires: _____ By: _____ (L.S.)

Notary Public

Print Name

Atlanta Public Schools
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PRIMARY VENDOR / SUBCONTRACTOR UTILIZATION

(This form must be completed and returned with your response)

RFP Name: Instructional Materials and Supplies

RFP Number: 2019-0062

Primary Vendor Name: _____

If subcontractors will not be used check this box:

List all subcontractors to be used during the performance of this contract. Submit additional forms if needed.

Company Name: _____

Street Address: _____

City, State, Zip: _____

Telephone: (_____) _____ Fax: (_____) _____

Primary Contact: _____

E-mail Address: _____

Services to be provided:

Company Name: _____

Street Address: _____

City, State, Zip: _____

Telephone: (_____) _____ Fax: (_____) _____

Primary Contact: _____

E-mail Address: _____

Services to be provided:

Company Name: _____

Street Address: _____

City, State, Zip: _____

Telephone: (_____) _____ Fax: (_____) _____

Primary Contact: _____

E-mail Address: _____

Services to be provided:

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PROMISE OF NON-DISCRIMINATION

(This form must be completed and returned with your response)

In consideration of, and as condition precedent, the right and privilege to bid on construction projects and other procurement contracts of the APS, each potential vendor shall be required to submit to the APS Office of Contract Administration, a duly executed and attested Promise of Non-Discrimination, enforceable at law, which by agreement, affidavit or other written instrument acceptable to the General Counsel for APS, shall contain promises, averments and/or affirmations voluntarily made by the bidder.

"Know All Men by These Presents, that I/We,

(_____)

Authorized Company Representative Name(s)

(_____)

Authorized Company Representative Title(s)

(_____)

Name of Company

(Hereinafter "Company"), in consideration of the privilege to bid on contracts funded in whole or in part by Atlanta Independent School System (hereinafter, "APS") , hereby consents, covenants and agrees as follows:

- (1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, color, sex, religion, national origin, marital status, sexual orientation , age, or disability in connection with any bid submitted to APS, or the performance of any contract resulting there from;
 - (2) That it is and shall be the policy of Company to provide equal opportunity to all business persons seeking to contract or otherwise interested in contracting with this Company, including those companies owned and controlled by racial minorities, cultural minorities and females:
 - (3) That the promises of non-discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption for so long as any contract between Company and APS remains in force and effect;
 - (4) That the promises of non-discrimination as made and set forth herein shall and are hereby deemed to be made a part of, and incorporated by reference into, any contract or portion thereof which the Company may hereafter obtain with APS; and
 - (5) That the failure of this company to satisfactorily discharge any of the promises of non-discrimination as made and set forth herein shall constitute a material breach of contract entitling the APS to declare the contract in default and to exercise any and all applicable rights and remedies including but not limited to cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract.

Solicitation Name

Solicitation Number

Authorized Company Representative Name

Authorized Company Representative Signature

Date

**Atlanta Public Schools
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Contractor Affidavit of Compliance under O.C.G.A. § 13-10-91(b)(l)

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Atlanta Public Schools has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Instructional Materials and Supplies 2019-0062

Name of Project

Atlanta Public Schools

Name of Public Entity

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____

in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of authorized Officer or Agent

Subscribed and Sworn Before Me

On This The _____ Day Of _____, 20____.

Notary Public

My Commission Expires: _____

Atlanta Public Schools
Instructional Materials and Supplies

Subcontractor Affidavit of Compliance under O.C.G.A. § 13-10-91(b)(3)

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _____ (name of contractor) on behalf of Atlanta Public Schools has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Instructional Materials and Supplies - 2019-0062

Name of Project

Atlanta Public Schools

Name of Public Entity

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____

in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of authorized Officer or Agent

Subscribed and Sworn Before Me

On This The _____ Day Of _____, 20____.

Notary Public

My Commission Expires: _____

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Sub-subcontractor Affidavit of Compliance under O.C.G.A. § 13-10-91(b)(4)

By executing this affidavit, the undersigned sub-subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract for _____ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract) and _____ (name of contractor) on behalf of Atlanta Public Schools has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned sub-subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned sub- subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the sub- subcontractor with the information required by O.C.G.A. § 13-10-91(b). The undersigned sub-subcontractor shall submit, at the time of such contract, this affidavit to _____ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Additionally, the undersigned sub-subcontractor will forward notice of the receipt of any affidavit from a sub-subcontractor to _____ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Sub- subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Instructional Materials and Supplies 2019-0062

Name of Project

Atlanta Public Schools

Name of Public Entity

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____

in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of authorized Officer or Agent

Subscribed and Sworn Before Me

On This The _____ Day Of _____, 20____.

Notary Public

My Commission Expires: _____

**Atlanta Public Schools
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Affidavit of Exception

I attest that I am exempt from providing an Affidavit of Compliance to Atlanta Public Schools pursuant to O.C.G.A. § 13-10-91, as amended, for one of the following reasons:

I am a sole proprietor with no employees, subcontractors or sub-subcontractors and I will not use employees, subcontractors or sub-contractors for any work performed for Atlanta Public Schools.

*In order to be exempt from compliance under the above exception, in addition to this affidavit you must provide a copy of your State of Georgia driver's license.

(Please see

http://www.georgia.gov/vgn/images/portal/cit_1210/50/35/173461453Lists_of_states_that_verify_immigration_status_7_26_11.pdf for a list of driver's licenses from alternative states that can be submitted in lieu of a Georgia driver's license.)

My company/firm will render services to Atlanta Public Schools; however, the services will not be rendered in the State of Georgia.

My company/firm will only provide goods to Atlanta Public Schools and will not render any physical services to Atlanta Public Schools.

Vendor Name: _____

Name of Project: Instructional Materials and Supplies -2019-0062

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____

in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of authorized Officer or Agent

Subscribed and Sworn Before Me
On This The _____ Day Of _____, 20____.

Notary Public

My Commission Expires: _____

Atlanta Public Schools Instructional Materials and Supplies

Local Preference

In order to encourage and promote Atlanta Public Schools contracting opportunities with local businesses, formal solicitation processes may give preference to proposals and bids from local businesses based on the following rules.

Local Area

The chart below shows the counties and cities considered local for preference purposes. A business must have been registered in one of the below jurisdictions for at least 12 months to receive local preference.

County	Cities
Clayton	Forest Park, Jonesboro, Lake City, Lovejoy, Morrow, Riverdale
Cobb	Acworth, Austell, Kennesaw, Mableton, Marietta, Powder Springs, Smyrna, Vinings
DeKalb	Atlanta, Avondale Estates, Chamblee, Clarkston, Decatur, Doraville, Dunwoody, Lithonia, Pine Lake, Stone Mountain
Fulton	Atlanta, Alpharetta, Chattahoochee Hills, College Park, East Point, Fairburn, Hapeville, Johns Creek, Milton, Mountain Park, Palmetto, Roswell, Sandy Springs, Union City
Gwinnett	Berkeley Lake, Buford, Dacula, Duluth, Grayson, Lawrenceville, Lilburn, Loganville, Norcross, Snellville, Sugar Hill, Suwanee

Certification

Local businesses that wish to receive preferential consideration shall submit a copy of one or more valid Occupational Tax Registration Certificate(s) issued by Clayton, Cobb, DeKalb, Fulton or Gwinnett counties or by a city government located within the five-county metro area (e.g. Atlanta, Decatur, Marietta) covering the last 12 month period to certify qualification for the preference as part of each proposal or response.

Procedures for local preference

Request for Proposals (RFP) – If a local business meets the quality standards established for the RFP process, the local business shall be awarded five (5) additional points in the total evaluation. The evaluation and scoring of all proposals shall be conducted in accordance with departmental procedures issued by the Chief Financial Officer or his/her designee.

Invitations for Bid (IFB) – In general, price is the deciding factor in APS invitation to bid processes. In cases when two or more responses offer the same price to the district, local preference will be used as a tiebreaker.

In order to qualify for local preference based on the requirements listed above, you must submit with your proposal a copy of your Occupational Tax Registration Certificate.

Company Name: _____

Company Qualifies for Local Preference: Yes No

Occupational Tax Registration Certificate issued by:

County: _____ or City: _____

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Exhibit A (Mandatory)

Description of Voluntary Outreach Efforts to Obtain M/WBE Subcontractor Participation

Please answer the following questions regarding voluntary outreach efforts and return this questionnaire with any pertinent attachments (i.e., ads, meeting attendance list, notifications of interest in obtaining bids, plans of inclusiveness, etc.) with your offer. None of the identified activities are mandatory, a bidder need not perform all of the activities below, and activities are only examples of the outreach that might be conducted. Only your response to this questionnaire is mandatory.

Project Name: _____
Solicitation Number: _____
Vendor/Contractor: _____

A]	Does your company have a plan of inclusiveness for M/WBEs? If so, please attach a copy of the plan and return with your offer.
B]	Does/Did your company:
1.	Attend or hold any pre-proposal meetings scheduled to inform M/WBE of subcontracting opportunities? If YES, please attach list of meetings attended. Yes _____ No _____
2.	Advertise subcontracting opportunities in: a) trade associations including the Dodge Plan Room for construction projects, or b) minority and women oriented media? If YES, please attach copies of ads for a, b, c. Yes _____ No _____
3.	Provide timely written notice to specific M/WBEs that perform relevant work that their interest in the contract is being solicited (e.g., through emails)? If YES, please attach a sample of such notification and list M/WBEs contacted. Yes _____ No _____
4.	Follow up initial solicitations of interest by personally contacting M/WBEs? If YES, please attach a list those M/WBEs contacted. Yes _____ No _____
5.	Provide interested M/WBEs with timely and thorough information about the plans, specifications and technical requirements of the contract? If YES, please attach a list of the M/WBEs provided with such information. Yes _____ No _____

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6.	Select portions of the contract to be performed by M/WBEs in a manner that will increase the likelihood of M/WBE participation? This might include breaking out contract work items into economically feasible units and providing delivery schedules that encourages M/WBE participation. (The desire of the bidder to perform types of work with its own forces does not relieve it from reporting outreach efforts.) If YES, please attach a written description of these efforts. Yes _____ No _____
7.	Assist M/WBEs in removing any barriers to participation on the contract, such as waiving or assisting with bonding requirements, obtaining lines of credit and insurance, obtaining equipment and materials, allowing reimbursement for mobilization, and providing for prompt payment. If YES, please describe these efforts. Yes _____ No _____
8.	Negotiate in good faith with interested M/WBEs, and not reject M/WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities? If YES, attach a written list of the M/WBEs with whom good-faith negotiations were conducted. Yes _____ No _____
9.	Conduct other efforts to encourage M/WBE participation? If YES, please describe.

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SOLICITATION CHECKLIST

(This form must be completed and returned with your response)

RFP Name: Instructional Materials and Supplies

RFP Number: 2019-0062

The following items must be completed and submitted online with your response.

1. Reviewed addendum(s) posted to the APS Bonfire (if applicable).
2. Offeror affirmation form.
3. Offeror information form.
4. Offeror reference form.
5. Joint venture affidavit form
6. Primary vendor / subcontractor utilization form.
7. Promise of non-discrimination form
8. Contractor Affidavit of Compliance under O.C.G.A 13-10-91(b) (1), if applicable
9. Subcontractor Affidavit of Compliance under O.C.G.A 13-10-91(b) (3), if applicable.
10. Sub-subcontractor Affidavit of Compliance under O.C.G.A 13-10-91(b) (4), if applicable
11. Affidavit of Exception, if applicable
12. Occupation Tax Registration Certificate, (if applicable, refer to section 9 Local Preference).
13. Copy of local or state business license or permit (if firm does not qualify for local preference)
14. Review and accept all provisions of the contract by executing and returning signature page
15. Review and accept the General Terms and Conditions
16. Description of Voluntary Outreach Efforts (Exhibit A)
17. Price Proposal Form (Exhibit B)

How did you hear about this solicitation?

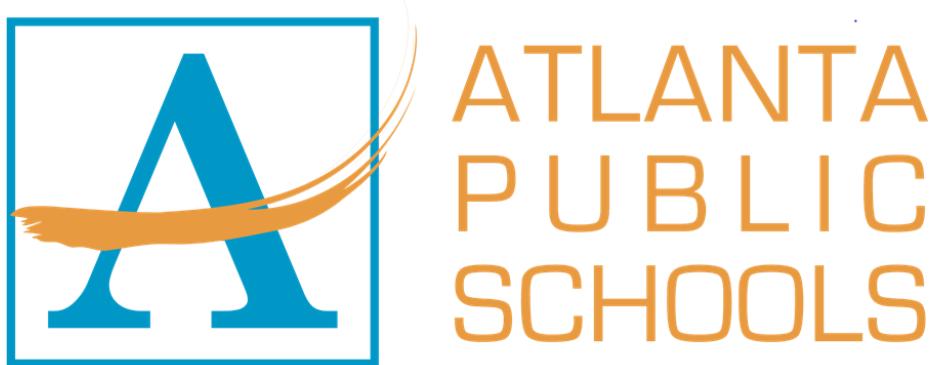
APS Website
Georgia Procurement Registry
Other (please list) _____

Company Name

Signature of Authorized Company Representative

Date

**Atlanta Public Schools
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**AGREEMENT BETWEEN
ATLANTA INDEPENDENT SCHOOL SYSTEM
AND**

**FOR
Instructional Materials and Supplies
2019-0062**

**Atlanta Public Schools
Instructional Materials and Supplies**

**STATE OF GEORGIA
COUNTY OF FULTON**

This Agreement ("Agreement") is made and entered into by and between the **Atlanta Independent School System** a/k/a the Atlanta Public Schools, an independent school system chartered under the laws of the state of Georgia, having a headquarters at 130 Trinity Avenue, S.W., Atlanta, GA 30303 (hereinafter referred to as "**APS**") and _____ (*insert full legal name of contractor*) a company organized and existing under the laws of the state of _____ located at _____ (*insert contractor's address*) (hereinafter referred to as the "**Contractor**", and together with APS, the "Parties", and each a "Party").

WITNESSETH

WHEREAS, APS sought proposals from vendors to provide _____ (*insert solicitation name*) in Solicitation No. _____

WHEREAS, **Contractor** submitted a proposal to APS for the provision of said goods and/or services; and

WHEREAS, the Executive Director of Purchasing and Warehouse Operations Services for APS recommended that Contractor be awarded a contract to provide said goods and/or services to APS; and

WHEREAS, at its meeting on _____ (*insert date*) the Board of Education authorized this Agreement with Contractor.

NOW, THEREFORE, for and in consideration of the mutual agreements between the parties hereinafter contained, and for other good and valuable consideration, the parties hereto do agree as follows:

ARTICLE I. DEFINITIONS

1.1 Contract Documents.

The Contract Documents relative to this Agreement consist of: (*update list as needed*)

- a. This Agreement;
- b. Solicitation _____ (*insert solicitation name & number*) (**Exhibit A**);
- c. The Contractor's Proposal to the above-numbered Solicitation, including pricing, and any applicable Scope of Services and any applicable Payment and Payment Terms Schedule attached except that objections or amendments by a Contractor that have not been explicitly accepted by APS in writing in this Agreement shall not be included in the Contract Documents or this Agreement and shall be given no weight or consideration; (**Exhibit B**);

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- d. Board Authorization Report No. _____, dated _____ *(insert board item number and date)* (**Exhibit C**); and
- e. The Official Letter of Intent to Award Letter dated _____ (**Exhibit D**).

This Agreement together with the aforementioned documents collectively form **the Contract**. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. APS shall not be bound by any additional terms and conditions, including but not limited to, terms and conditions related to any provided service or good, limitations of the Contractor's liability or any other third party's liability, limitation of warranties, packaging, invoices, service catalog, brochure, technical data sheet, electronic disclosures, electronic agreements, or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions of this Contract.

1.2 Inconsistency.

Any inconsistency or conflict among the specific provisions of this Agreement and the other Contract Documents shall be resolved as follows:

- a. First, by giving preference to the specific provisions of this Agreement;
- b. Second, by giving preference to the specific provisions of the Solicitation, attached hereto as **Exhibit A**;
- c. Third, by giving preference to the specific provisions of Contractor's Proposal, including pricing and any applicable Scope of Services and any applicable Payment and Payment Terms Schedule attached hereto as **Exhibit B**, except that objections or amendments by a Contractor that have not been explicitly accepted by APS in writing in this Agreement shall not be included in the Contract Documents or this Agreement and shall be given no weight or consideration.

ARTICLE II. SCOPE OF CONTRACT

2.1 Contractor will provide, and APS hereby engages Contractor for the purpose of providing _____ *(insert name or general description of goods/services to be provided)* to APS in accordance with the statement of Work included in Contractor's Proposal, and/or outlined in the Solicitation dated _____, 20_____. *(insert date of solicitation)*

Contractor agrees to provide said goods or services to or for APS and to perform all other tasks required by this Contract.

2.2 Contractor will provide the goods and/or services to APS in the manner defined in

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Contractor's Proposal attached hereto as Exhibit B and incorporated herein by reference.

ARTICLE III. TERM

The term of this Contract is as follows:

3.1 Initial Term.

The performance period for this contract is one (1) year, subject however to paragraph 3.2 and Article VII below. Contract performance shall begin on _____, 20_____. *(insert state date for contract)*

3.2 Optional Renewal Terms.

In addition to the base period of one (1) year, there are _____() *(insert number of renewals)* one-year optional renewal terms (each a "Renewal Term") to be exercised at the sole discretion of APS.

Additionally, as required by O.C.G.A. § 20-2-506, this Contract shall terminate absolutely and without further obligation on the part of APS at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed, unless earlier terminated as provided in this Agreement or renewed as provided herein. During the Term, this Contract will be automatically renewed for the following calendar year unless this Contract is terminated in accordance with the provisions of Article VII herein below.

3.3 Same Terms.

Unless mutually agreed upon in writing by the parties, or otherwise indicated herein, all provisions and conditions of any Subsequent or Renewal Term shall be exactly the same as those contained within in this Contract.

3.4 Statutory Compliance Regarding Purchase Contracts.

The parties intend that this Agreement shall operate in conformity with and not in contravention of the requirements of O.C.G.A. § 20-2-506, as applicable, and in the event that this Agreement would conflict therewith, then this Agreement shall be interpreted and implemented in a manner consistent with such statute.

ARTICLE IV. CONTRACTOR SERVICES AND RESPONSIBILITIES

4.1 Performance.

Contractor by the execution of this Agreement, acknowledges that it is possesses that degree of care, learning, skill, and ability which is ordinarily possessed by other members of its profession and further represents that in the performance of the services herein set forth it will exercise such degree of care, learning, skill and ability as is ordinarily employed by Contractor under similar conditions and like circumstances and shall perform such duties without neglect and shall be liable for failure to exercise such degree of care, learning and ability. Any

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equipment, supplies, or materials used in the performance of this Contract shall be at the expense of the Contractor.

4.2 Contractor's Responsibilities.

a. General

It is the Contractor's responsibility to comply with all of the terms and conditions of this Contract. The Contractor is also expected to make every effort to support the mission and duties of APS.

b. Personnel and Staffing.

Contractor is solely responsible for all matters concerning the recruitment, performance and retention of Contractor's personnel. Contractor must fully comply with all federal, state, and local laws/regulations regarding employment and immigration, including, but not limited to, nondiscrimination, compensation, taxation, and benefits.

Contractor understands and agrees that employees of APS or the Atlanta Board of Education are not permitted to work under this Contract, nor can they have ownership in a company that bids for or works under this Contract, either as a prime contractor or as a sub-contractor. Any breach of this provision shall result in immediate termination of this Contract and termination of employment with APS.

Contractor warrants that all persons assigned to perform the services under this Contract are either lawful employees of Contractor or lawful employees of a subcontractor authorized by APS. All of Contractor's or any of subcontractor's personnel shall comply with the confidentiality requirements of the Agreement and the security requirements of APS while on school property or at a school related function. In the event that any of Contractor's or subcontractor's personnel do not comply with such confidentiality and security requirements, APS may have the personnel removed from the premises. Contractor agrees that any obligation to provide health insurance to any individual employed, utilized or subcontracted by Contractor shall be the sole and exclusive responsibility of Contractor or the subcontractor of Contractor.

Contractor warrants that all persons assigned to perform the services under this Contract are qualified to perform such Services. Personnel assigned by Contractor shall have all professional licenses required to perform the Services. If APS believes that the performance or conduct of any person employed or retained by Contractor to perform any Services hereunder is unsatisfactory for any reason or is not in compliance with the provisions of this Contract, APS shall notify Contractor in writing and Contractor shall promptly address the performance or conduct of such person, or, at the request of APS, immediately replace such person with another person acceptable to APS and with sufficient knowledge and expertise to perform the services in accordance with this Contract.

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Contractor warrants that an adequate number of appropriately qualified personnel will be employed and available to provide the services in accordance with the schedule and maintenance requirements set forth in the Contract.

Contractor warrants that persons assigned by Contractor to provide the services to APS possess all licenses, training and certifications required by the State of Georgia.

Contractor understands and agrees that it is responsible for paying the wages of Contractor's personnel, and will be responsible for withholding and remitting all income and social security taxes from their wages and for paying workers' compensation insurance premiums, state and federal unemployment insurance taxes and the employer's share of social security taxes on the behalf of its personnel, as required by law.

Contractor recognizes that personnel who are assigned to provide the services may have access to certain information, which may be proprietary and confidential. Contractor will require each of the personnel to treat this information as confidential and agree not to disclose it to any third person in accordance with the terms of this Contract.

Contractor agrees to relinquish to APS any and all proprietary rights which it may have in work product created or contributed to by personnel while on assignment.

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee for Contractor to solicit or secure this Agreement; and that it has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

For the breach or violation of the above warranty and after notice, APS shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

4.3 Warranties.

APS does not waive, amend or abridge any stated or implied contractual or warranty rights provided to APS under state or federal law. In addition, Contractor warrants and agrees as follows:

- (i) Any goods, applications or software purchased or provided under this Contract will be defect free in design, materials and workmanship, be of the quality, size and dimensions ordered, be of first quality material and workmanship, merchantable, fit for the purposes specified by APS in the Solicitation and shall conform to all the requirements of the Solicitation. The packaging, packing, marking, and shipping of such goods will conform with the requirements of the Solicitation and as set forth

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in Contractor's Proposal. This express warranty shall not be waived by reason of acceptance of the goods or payment thereof by APS.

- (j) Any services purchased under this Contract will be performed by Contractor according to its best efforts for the Term(s) of this Contract. This express warranty shall not be waived by reason of acceptance of the services or payment thereof by APS.
- (k) Contractor is fully aware of APS' business requirements and intended uses of the goods, applications, software, processes, services and products and warrants that such shall be fit for such intended uses.
- (l) Contractor represents and warrants that all the concepts, materials, applications, products and services produced, or provided to the APS shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials, products, applications and services. Contractor represents and warrants that the concepts, materials, applications, products and services and the APS' use of same shall not infringe upon any other work, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials, products and services will not infringe upon the copyright, trademark, trade name, trade dress, patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. This express warranty shall not be waived by reason of acceptance of the goods or payment thereof by APS.

ARTICLE V. FINANCIAL ARRANGEMENTS

5.1 Compensation and Payment.

APS shall pay Contractor for the satisfactory performance of the services and satisfactory delivery of the goods solicited, approved and accepted under this Contract, the terms and rates set forth in the Contractor's Proposal. Contractor acknowledges and agrees that this is a nonexclusive requirements type contract. Regarding Contractor's provision of goods and/or services under this Contract, APS will utilize Contractor's services on an as needed basis, based on approved statement of work and as such APS will only be responsible for payment for goods and/or services related to Contractor's Proposal and Statement of Work that are satisfactorily performed and meet APS' required specifications.

Contractor further acknowledges and agrees that the value of this Contract shall not exceed _____ Dollars (\$_____.00) annually; (*Insert estimated annual expenditure*) however, APS is under no obligation to solicit goods or services totaling this amount and Contractor will only be paid for services rendered and good accepted. Nothing in this Contract shall serve as a

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guarantee that Contractor will receive any purchase orders for goods or services solicited under this Contract.

Contractor shall submit periodic invoices in triplicate detailing the services performed and the goods delivered (as applicable). APS shall make payments in accordance with APS Finance Department's payment procedures.

Any delay in the approval of an invoice or any delay in the payment will not excuse failure-to-perform by Contractor. APS shall have fifteen (15) days to approve or disapprove an invoice. Once approved, APS will have thirty (30) days to pay any approved invoiced. APS will not be subject to any late fees by Contractor.

5.2 Payments Withheld.

APS may decline to approve an invoice and may withhold any payment, in whole or in part, to the extent necessary to reasonably protect APS from loss, because of any of the following:

- a. Services not performed in accordance with the terms of this Contract and which have not been remedied in accordance with this Contract;
- b. Contractor supplies APS with nonconforming goods and fails to cure the deficiency (at Contractor's sole expense) to APS' reasonable satisfaction in accordance with this Contract;
- c. Persistent failure of Contractor to perform or provide its good or services in accordance with the contract schedule and the milestones established;
- d. Liens filed by Contractor's sub-consultants or subcontractors or third party claims based on Contractor's failure to make payments for services performed or materials provided;
- e. Failure of Contractor to make payments properly to its own sub-consultants or subcontractors for services performed or materials provided;
- f. Damage to APS or to another contractor by Contractor; or,
- g. Failure of Contractor to provide upon request by APS documentation sufficient to substantiate charges on any invoice submitted for payment.
- h. Breach of any warranties contained in this Agreement.

5.3 Final Payment.

The acceptance of final payment shall, after the date of completion of the services and/or delivery of goods required under this Contract, constitute a release and a waiver of all claims by Contractor for payment for services and./or good delivered under this Contract relating to or arising out of, in any way, this Agreement (and any amendments thereto) against the Board of

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Education of the City of Atlanta, Atlanta Public Schools, Atlanta Independent School System, and their respective agents, representatives, administrators, employees, officers, directors, attorneys, successors and assigns of and from any and all claims, actions or causes of actions, charges, damages, liabilities, responsibilities, demands, liens, judgments or suits of any kind or nature whatsoever, whether in law or equity, for damages of every kind, character or description, as well as all costs, expenses, including attorney fees and cost of litigation, compensation, consequential damages, or any other claim which Contractor has, may have, or claims to have in the future, whether known or unknown, relating to or arising out of in any way this Contract (and any amendments thereto) between APS and Contractor.

5.4 Accounting Records.

All records of expenses pertaining to this Contract shall be kept on a sound accounting basis. Contractor shall maintain full and complete records and such records shall be available for review by APS or its authorized representative at mutually convenient times. All records must be maintained for a minimum of seven (7) years after the final payment by APS or until all litigation, claims, or audit findings involving the records have been resolved if such claim or audit is started before the expiration date of the three-year period. In addition, APS shall have the authority to audit any and all records pertinent or relative to the Contract, the Contractor's records and any and all of its subcontractors' records pertinent or relative to the Contract, at any time for a period of at least three (3) years after close-out of the Contract and Contractor shall surrender such records upon request and provide access to APS and any reviewing agencies during such period.

5.5 Risk of Loss for Delivery of Goods

For all goods purchased by APS under this Agreement, Delivery shall be FOB destination, APS' place of business. Insurance during shipment and until the goods are accepted by APS is the responsibility of Contractor.

5.6 Rejection or Revocation of Acceptance of the Goods

All goods are subject to final inspection and acceptance within a reasonable time after delivery and the right to reject defective or non-conforming goods is reserved despite any prior inspection by APS.

ARTICLE VI. CONFIDENTIALITY AND SECURITY

6.1 Definition

Confidential information is defined as follows:

- a. Any information about the APS or its business that is:
 - i. Stamped "Confidential"; or

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- ii. Identified in writing as confidential to Contractor or any of its representatives by or on behalf of APS at the time of or promptly following the information's written or oral disclosure and
- b. All notes, analyses, compilations, studies, summaries, and other material (tangible or intangible), however documented, containing or based, in whole or in part, on any information described in subsection (a) above (collectively, the "Derivative Materials").
- c. Any information that is excluded from disclosure by APS by the Georgia Open Records Act OCGA 50-18-70 et. seq. ("the Open Records Act"), including but not limited to, student educational records and information.
- d. Despite any other provision in this Section, the failure by APS to identify information as Confidential Information is not an acknowledgement of admission by APS that the information is not confidential or a waiver by APS of any of its rights with respect to the information.

The term "Confidential Information" does not include information that Contractor demonstrates:

- i. Was or becomes generally publicly available, other than as a result of a disclosure by Contractor or any of its Representatives in violation of this Agreement.
- ii. Is in the lawful possession of the Recipient or any of its Representatives prior to its disclosure by or on behalf of APS or any of its Representatives; or
- iii. Was or becomes available to Contractor or any of its Representatives on a non-confidential basis prior to its disclosure by or on behalf of APS or its Representatives from a third party that to Contractor's knowledge after due inquiry is not bound by a similar duty of confidentiality (contractual, legal, fiduciary or other).

6.2 Contractor's Obligation Regarding Confidential Information

During and after the Term of this Contract, Contractor shall take all commercially reasonable measures necessary to keep the Confidential Information confidential, including, without limitation, all measures it takes to protect its confidential information of a similar nature. Without limiting the effect of the preceding sentence, Contractor will take commercially reasonable actions, legal or otherwise, necessary to cause its Representatives to comply with the provisions of this Agreement and to prevent any disclosure of the Confidential Information

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by any of them.

Contractor shall give prompt written notice to APS of any suspected or actual security breach that may or does impact APS data or of any unauthorized use or disclosure of the Confidential Information. Contractor shall assist APS in remediying each unauthorized use of disclosure. Giving assistance does not waive any breach of this Section by Contractor, nor does acceptance of the assistance constitute a waiver of any breach of this Section.

The Contractor shall comply with Federal and State laws and regulations regarding confidentiality of student records. Specifically, Contractor shall comply and shall assist APS in compliance, in all material respects, with applicable laws and regulations, including with Family Educational Rights and Privacy Act (FERPA), 20 U.S.C 1232g and the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. 1232h, and all applicable privacy laws.

To the extent Contractor or a subcontractor comes into contact with any student data or information, Contractor or subcontractor will not disclose such information without eligible student/parent/guardian and APS written permission. Personally identifiable student information and education records as defined pursuant to O.C.G.A. Title 20 and FERPA, will be, and will be deemed to have been, received in confidence and will be used only for purposes of the services contemplated in this Contract.

In its own discretion, APS may designate Contractor as a "school official" within the meaning of FERPA, if APS determines that the Services under this Agreement are functions that would normally be provided by APS and if APS determines that Contractor has a legitimate educational interest in student educational records and information. Contractor will be under the direct control of APS with respect to the use and maintenance of personally identifiable information and education records, as those terms are defined by FERPA, and use personally identifiable information and education records may only be for the purpose of performing its obligations under this Agreement. APS retains all ownership rights in education records and personally identifiable student information.

Notwithstanding any other term of this Agreement, Contract will not disclose personally identifiable information or education records to any third party except as permitted by 34 C.F.R. 99.33(a). APS may have access to student records maintained by Contractor with ten (10) business days' notice to Contractor as provided for in this Agreement. With respect to information protected by FERPA, Contractor may not continue to maintain education records or personally identifiable information of Students after termination, and must return or destroy, as requested by APS, all such records and information to APS as the owner of that information within ten (10) days of termination for any reason, unless otherwise agreed to in writing by the Parties.

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6.3 Breach of Confidentiality

Contractor acknowledges and agrees that an award of money damages is inadequate for any breach of this Section by Contractor, or any of its respective agents, representatives, administrators, employees, officers, directors, attorneys, successors and assigns; and that any breach causes APS irreparable harm. Therefore, in the event of any breach or threatened breach of this Section by Contractor or any of its Representatives, APS is entitled to equitable relief, including injunctive relief and specific performance, without proof of actual damages and without the posting of a bond..

6.4 Georgia Public Records.

Contractor understands and agrees that APS must comply with the Open Records Act and release public documents as defined by the Open Records Act upon request, including this Agreement and all records created and maintained in relation to this Agreement, unless otherwise exempt under other provisions of the Open Records Act. Contractor understands and agrees that APS will respond to requests under the Open Records Act at its discretion.

Contractor shall assist APS in compliance with all provisions of the Open Records Act and make records pertaining to the performance of services or functions under this Contract available to APS at the request of APS.

If Contractor asserts that any information in its response or in any information provided to APS with respect to the services or products under this Agreement are a protectable trade secret, as that term is defined in O.C.G.A. § 10-1-761, then Contractor **must** follow the requirements of the Act set forth at O.C.G.A. § 50-18-72(a)(34) and submit an affidavit declaring and specifically describing their trade secrets, including those of their subcontractor.

6.5 Data Security

Contractor understands and agrees that it is imperative to protect APS data in order to protect public resources and to prevent identity theft or other malicious and damaging acts.

Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations, as the same may be amended or supplemented from time to time, including but not limited to those pertaining in any way to the privacy, confidentiality, security, management, and disclosure of APS data and information. Contractor shall also adhere to all applicable industry standards concerning privacy, data protection, confidentiality and information security as well as all APS policies, procedures, and operating guidelines regarding privacy, confidentiality, and security.

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ARTICLE VII. TERMINATION

This Agreement may be terminated as follows (in addition to the termination provisions set forth in the Solicitation, if any):

7.1 Termination Without Cause

- a. APS may, at any time upon thirty (30) days prior written notice to Contractor, terminate (without prejudice to any right or remedy of APS) the whole or any portion of this Contract for the convenience of APS. If APS terminates the whole or any portion of this Contract at APS' convenience, then APS shall only be liable to Contractor for the goods and/or services satisfactorily provided and or performed by Contractor up to the date of termination.
- b. APS may terminate the agreement pursuant to O.C.G.A. § 20-2-506, APS by providing Contractor with at least thirty (30) days prior to the end of each calendar year during the term of this Agreement.
- c. Further and pursuant to O.C.G.A. § 20-2-506, in the event appropriated funds are determined no longer to exist or to be insufficient for purposes of fulfilling APS's obligations hereunder, APS may terminate this Agreement by providing at least fifteen (15) days written notice of termination to the Contractor. Notice of termination shall include a certification by APS of the unavailability or insufficiency of funding, and such certification shall constitute an agreement by APS not to replace the services covered hereunder in whole or in part with any service obtained from a provider other than the Contractor before the earlier of the end of the calendar year following the year in which the notification of such certification is received by the Contractor or the date this Agreement expires on its own terms, whichever first occurs. APS shall be obligated for payments to the Contractor through the date of termination.
- d. This Contract may be terminated by APS if APS gives the Contractor a written notice indicating non-renewal no less than 15 days prior to any automatic renewal date under the contract. The written notice of non-renewal notice will evidence APS' intention not to renew this Agreement.

7.2 For Cause Termination and Other Remedies.

The occurrence of any one or more of the following events shall a default by Contractor under this Contract:

- a. Contractor fails to deliver the goods and services ordered by APS under this Contract or has delivered nonconforming goods or services or fails to perform, to the satisfaction of APS, any material requirement of the contract

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- or is in violation of a material provision of this contract, including, but without limitation, the express warranties made by the Contractor;
- b. Contractor fails to make substantial and timely progress toward performance of the contract; or APS determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
 - c. Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law; or the Contractor terminates or suspends its business; or APS reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
 - d. The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations or orders when performing within the scope of the contract;
 - e. The Contractor has engaged in conduct that has or may expose APS to liability, as determined in APS' sole discretion; or
 - f. The Contractor has infringed on a patent, trademark, copyright, trade dress or any other intellectual property rights of a third party.

In the event of default Contractor, APS shall provide written notice to the Contractor requesting that the breach or noncompliance be cured or remedied within the period of time specified in APS' written notice to the Contractor. If the breach or noncompliance is not cured or remedied within the period of time specified in the written notice, then APS may: (1) Immediately terminate the contract without additional written notice; and/or (2) Procure substitute goods or services from another source and charge the difference between the contract and the substitute contract to the defaulting Contractor including without limitation offsetting amounts owed by APS to the Contractor by such charges; and/or (3) Enforce the terms and conditions of the contract and seek any legal or equitable remedies.

7.3 Termination by Contractor

Contractor may terminate this Contract if APS fails to make timely payment (within 30 days of invoice) of an invoice that has been approved by APS Prior to terminating this Agreement, Contractor shall provide 15 days written notice to APS, notifying APS of its failure to pay. APS may cure its default within 15 days of receipt of the notice.

ARTICLE VIII. INSURANCE

8.1 General Insurance Requirements.

The following general insurance requirements apply to any and all work under this Contract by all Contractors and Subcontractors of any tier:

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- a. Contractor shall provide insurance as required by the Contract Documents. Any and all insurance required by this Contract shall be maintained during the entire length of this Contract, including any extensions thereto, and until all work has been completed to the satisfaction of APS. Any and all insurance must be on an occurrence basis. No Contractor or Subcontractor shall commence any work of any kind under a contract until all insurance requirements contained within the solicitation have been complied with, and until evidence of all insurance requirements in each and every contract, with each and every Subcontractor of any tier, and shall require the same to comply with all such requirements.
- b. APS shall be covered as an Additional Insured under any and all insurance required by this Contract (other than Contractor's workers compensation and employer's liability insurance). Confirmation of this shall appear on all Certificates of Insurance and on any and all applicable policies.
- c. APS shall be given no less than thirty (30) days notice of cancellation of any insurance required under this Contract. APS shall be given not less than thirty (30) days prior written notice of material changes of any insurance required under this Contract. APS shall be given written notice of renewal of coverage not less than thirty (30) days prior to the expiration of any particular policy.
- d. Each and every agent shall warrant when signing the Certificate of Insurance that he is acting as an authorized representative on behalf of the companies affording insurance coverage under the contract and that he is licensed by the State of Georgia and is currently in good standing with Commissioner of Insurance for the State of Georgia.
- e. Any and all companies providing insurance required by this Contract must meet the minimum financial security requirements as set forth below. The rating for each company must be indicated on the Certificate of Insurance. For all contracts, regardless of risk, companies providing insurance under this Contract must have a current:
 - i. Best's Rating not less than A, and
 - ii. Best's Financial Size Category not less than size VII.
- f. In the event the Contractor neglects, refuses, or fails to provide the insurance required by this Contract, or if such insurance is canceled for any reason, APS shall have (a) the right, but not the duty, to procure the same, and the cost

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thereof shall be deducted from monies then due or thereafter to become due to the Contractor or (b) the right to terminate the Contract.

8.2 Worker's Compensation and Employer's Liability Insurance.

The Contractor shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits. Such insurance is to cover each and every employee who is or may be engaged in work under this Contract.

<u>Workers' Compensation</u>	<u>Statutory</u>
<u>Employer's Liability</u>	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$100,000 each employee
Bodily Injury by Disease	\$500,000 policy limit

This requirement does not apply to any business that has regularly in service less than three employees in the same business within the state of Georgia.

8.3 Comprehensive General Liability Insurance.

The Contractor shall procure and maintain Comprehensive Insurance in an amount not less than \$1,000,000 for bodily injury and property damage combined single limit. The following specific extensions of coverage shall be provided and indicated on the certificate of insurance:

- (1) Comprehensive Form
- (2) Contractual Insurance
- (3) Personal Injury
- (4) Broad Form Property Damage
- (5) Premises-Operations
- (6) Completed Operations

This coverage shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under this Contract. Policy coverage must be on an occurrence basis.

8.4 Automobile Liability Insurance.

The Contractor shall procure and maintain Automobile Liability Insurance in an amount not less than \$1,000,000 for bodily injury and property damage combined single limit. The following extensions of coverage shall be provided and indicated on the certificate of insurance:

- (1) Comprehensive Form
- (2) Owned, Hired, Leased and non-owned vehicles to be covered

If the Contractor does not own any vehicles in the corporate name, non-owned vehicles coverage shall apply and must be endorsed on either the Contractor's personal automobile policy or the Comprehensive General Liability coverage required under this Contract.

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8.5 Umbrella Liability Insurance.

The Contractor shall procure and maintain Umbrella Liability Insurance in an amount not less than \$1,000,000 per occurrence / \$1,000,000 aggregate.

ARTICLE IX. APS Prohibits Unlawful Discrimination and Harassment, Including Sexual Harassment

9.1 APS does not discriminate on the basis of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by law in any educational programs or activities or in employment policies and practices. Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor.

9.2 APS prohibits unlawful discrimination or harassment including sexual harassment. Contractor and Subcontractors, if any, must not engage in unlawful harassment including sexual harassment or discrimination while on school premises.

9.3 APS may suspend or terminate Contractor and Subcontractor or both if it violates these laws, policies, regulations, or provisions while on school premises.

ARTICLE X. Drug/Alcohol/Tobacco/Weapons Free Workplace

10.1 Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by law, during the performance of this Agreement while on school premises or at school related functions. Failure to comply with this provision may be considered a material breach.

10.2 Contractor and all subcontractors, if any, shall not possess any weapon, as defined by law on school property, at school related functions, or within 1000 feet of school property or school functions. Failure to comply with this provision may be considered a material breach.

10.3 Contractor and all subcontractors, if any, also shall adhere to all policies and regulations of APS and the Atlanta Board of Education that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on school premises or at school related functions. Failure to comply with this provision may be considered a material breach.

10.4 APS may suspend or terminate Contractor, subcontractor, or both if it violates these laws, regulations, or policies while within 1,000 feet of school property or school related functions, pursuant to Georgia law.

ARTICLE XI. Sales Tax.

APS is exempt from all state sales tax and federal excise taxes; and shall not pay any such taxes

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under this Contract. APS, upon written request, will provide Contractor with applicable sales tax exemption certificates.

ARTICLE XII. No Warranty Disclaimer

Contractor warrants that its services or goods or both fit the need or purpose of the Solicitation attached as Exhibit A. Contractor cannot disclaim these warranties. Should any third party warranties exist, Contractor agrees to pass along all such warranties to and for the benefit of APS, and to serve as APS' contact to facilitate its rights under such warranties.

ARTICLE XIII. GENERAL TERMS AND CONDITIONS

13.1 Assignment and Modification.

Contractor shall not assign, or transfer any interest in this Contract without the prior written consent of APS. No modification of this Contract shall be binding upon the Parties, unless consented to in writing, and signed by both Parties.

13.3 Subcontractors.

Contractor shall not subcontract services or any part of this Agreement without the prior written consent of APS.

13.4 Third Party Beneficiaries.

This Agreement does not and is not intended to confer any rights or remedies upon any Person other than the signatories.

13.5 Ownership.

Contractor retains all rights, title and interest in and to its intellectual property and copyright materials, provided in connection with Contractor's services (collectively, "Contractor IP"). Contractor grants to APS a personal, nonexclusive license to use Contractor IP for its own non-commercial, incidental use as contemplated herein. All data of APS shall remain the property of APS.

13.6 Indemnification.

APS shall not be liable for any injuries incurred by Contractor or any of its employees, representatives or agents during the performance of Contractor's duties as outlined in this Agreement. Contractor agrees to indemnify, hold harmless and defend APS, its current, future or past officers, agents and employees from any and against all claims, liabilities, damages, losses, judgments, charges, expenses (including attorney fees) and/or causes of action out of any alleged negligence or misconduct of Contractor and for which APS, the Atlanta Board of Education, its agents, servants or employees are alleged to be liable.

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Contractor further agrees to indemnify, hold harmless and defend the Board, APS, its agents, servants and employees from and against any claim, demand, liability, loss, charges, expenses (including attorney fees) and/or causes of action of whatever kind or nature arising out of any conduct or misconduct of Contractor not included in the paragraph above and for which the Board, its agents, servants or employees are alleged to be liable.

Contractor further agrees that its agreement to indemnify and hold harmless APS, its current, future or past officers, agents and employees shall not be limited to the limits of any insurance that may be required under this Agreement.

Nothing contained herein is intended to be a waiver in any respect whatsoever of the Board's right to assert under any circumstances whatsoever its claims of governmental and/or official immunity from any liability or damages asserted against it by any natural person or entities created by law.

This Subsection represents the entire agreement between the Parties regarding indemnification and replaces any other references to indemnification in Contract Documents or Exhibits.

13.7 Disputes.

In the event of any controversy, claim, dispute or other matter in question arising out of or relating to this Contract or the breach thereof or otherwise with the Contract, which has not been resolved pursuant to other conditions of this Contract (hereinafter referred to as the "dispute"), Contractor, prior to pursuing any legal action, shall appeal the dispute to the Executive Director of Purchasing and Warehouse Operations Services via APS' Purchasing Dispute Resolution Provisions.

Dispute Resolution Process

Before pursuing legal action, the vendor or contractor shall appeal the dispute to the Executive Director of Purchasing and Warehouse Operations Services via APS' Purchasing Dispute Resolution Provisions.

- a. A "dispute" is a disagreement" between APS and the vendor over the payment of money, the adjustment or interpretation of contract terms, any claims arising out of or relating to any aspect of a solicitation, bid, or failure to conduct a solicitation or bid, any decision to award, deny, suspend or cancel, terminate or not renew, any contract or agreement.
- b. These Dispute Resolution Procedures apply to and shall constitute the exclusive procedure for resolution of all claims, disputes, complaints and Dispute Resolution Requests of any kind filed by an Aggrieved Person relating in any way to any agreement entered into by the Vendor, including, but not limited to, those arising out of or relating to any aspect of a solicitation, bid, or failure to conduct a

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solicitation or bid, any decision to award, deny, suspend or cancel, terminate or not renew any contract or agreement.

c. Filing of A Dispute Resolution Request

- i) Any aggrieved person may file a Dispute Resolution Request seeking a determination with respect to any matter which is included within the scope of these Dispute Resolution Procedures as set forth in section "b" above. An aggrieved Person who files a Dispute Resolution Request is hereinafter referred to as a "Petitioner."
- ii) The Dispute Resolution Request shall be in writing, shall be filed by delivery by certified mail, or any other method by which a written business record of delivery is kept, to the Executive Director of Purchasing and Warehouse Operations Services at the address listed below:

Atlanta Public Schools
Attn: Executive Director of Purchasing and Warehouse Operations Services
130 Trinity Avenue
Atlanta, GA 30303
- iii) The Dispute Resolution Request shall include the following information:
 - The name, address, and telephone number of the Petitioner/Company;
 - Identification of the solicitation or contract name and number that is the subject of the dispute;
 - A statement of the factual grounds supporting the position of the Petitioner;
 - Any other documentation the Petitioner wishes to submit in support of Petitioner's position;
 - A statement of the relief requested;
 - The signature of the Petitioner.
- iv) For a Dispute Resolution Request to be timely filed, the Dispute Resolution Request must be physically received with the time period described in Section "d" below.

d. Time for Filing A Dispute Resolution Request

- i) Written disputes relative to the specifications or the solicitation document shall be filed not later than five (5) business days prior to the closing date for receipt of initial proposals.
- ii) Written disputes relative to an amendment to any solicitation that are apparent before the closing date for receipt of proposals shall be filed within five (5) business days after the amendment is posted.

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- iii) Written disputes relative to the award of a contract shall be filed within five (5) business days after the issuance of a Notice of Intent to award such contract.
 - If the Dispute Resolution Request is timely filed, APS may award and enter into such contract only if a written determination that the award of such contract without delay is necessary to protect substantial interests of the District.
 - iv) All other written disputes shall be filed not later than five (5) business days after the Aggrieved Person knows or should have known of the facts giving rise to the action complained of.
 - v) Failure to file a written Dispute Resolution Request in accordance with this section shall bar any further administrative equitable relief.
- e. Notice of Filing of A Dispute Resolution Request
- i) Material submitted by a Petitioner shall not be withheld from any interested party except to the extent required by law.
 - ii) If the Petitioner believes the Dispute Resolution Request contains material that should be withheld, a statement advising the Executive Director of Purchasing and Warehouse Operations Services of this fact shall accompany the Dispute Resolution Request submission.
- f. Decision by the Executive Director of Purchasing And Warehouse Operations Services
- i) The Executive Director of Purchasing and Warehouse Operations Services shall have the exclusive authority to decide all Dispute Resolution Requests.
 - ii) The Executive Director of Purchasing and Warehouse Operations Services shall issue a written decision within thirty (30) calendar days after a Dispute Resolution Request has been filed. The decision shall include:
 - A brief description of the claim;
 - A reference to the pertinent solicitation or contract provision;
 - A brief statement of the factual issues;
 - A statement of the Executive Director of Purchasing and Warehouse Operations Services decision with supporting rationale and the remedial action and/or award, if any.
 - iii) The Executive Director of Purchasing and Warehouse Operations Services shall furnish a copy of the decision to the Petitioner by certified mail, return receipt requested, or by any other method that provides evidence of delivery.
 - iv) Pending claims shall not delay payment for undisputed amounts from the District to an Aggrieved Person or Petitioner.

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g. Exclusive Administrative Remedy

These Dispute Resolution Procedures provide the exclusive administrative procedure for asserting a claim against the Purchasing and Warehouse Operations Services Department arising out of any matter which is within the scope of these Dispute Resolution Procedures. Neither an Aggrieved Person, Petitioner, nor any other interested party, has a right to any administrative remedy against the Purchasing and Warehouse Operations Services Department, except in accordance with the procedures set forth in these Dispute Resolution Procedures.

13.8 No Waiver of Legal Rights.

Any waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach, or of any right, that APS or Contractor may have for damages.

The Parties may waive any provision in this Contract only by a writing executed by the Party or Parties against whom the waiver is sought to be enforced.

No failure or delay (1) in exercising any right or remedy, or (2) in requiring the satisfaction of any condition under this Contract, and no act, omission, or course of dealing between the parties – operates as a waiver or estoppel of any right, remedy or condition.

A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.

13.9 Obligation to Perform.

Contractor shall continue to perform notwithstanding all disputes or disagreements with APS, other than APS' nonpayment of an approved invoice, following notice and cure as provided in this Agreement. Contractor's performance under this Contract shall not be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and APS may otherwise agree to in writing.

13.10 Rights and Remedies.

The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

13.11 Organization, Licenses, and Regulations.

Contractor must be organized under the laws of the State of Georgia, or otherwise registered to do business in the State of Georgia pursuant to O.C.G.A § 14-2-1501. APS may require Contractor to furnish a copy of documents evidencing such registration prior to or subsequent

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to the execution of this Contract. Contractor's failure to provide such documents upon demand by APS will constitute grounds for termination of this Contract by APS.

Contractor shall secure and keep in full force and effect during the term of this Agreement, without additional cost to APS, all business licenses and permits required for Contractor's performance of the services contemplated herein.

Contractor shall keep all records, give all notices, and provide all certificates or other assurances and otherwise comply with all applicable Federal, State and local laws, rules, and regulations applicable to an organization engaged in the Contractor's business including but not limited to, those bearing upon labor standards or practices, non-discrimination, equal employment opportunity and the like.

13.12 Notices.

Except as otherwise expressly provided, any notice, instruction or other written communication required or permitted to be given under this Agreement shall be deemed to have been delivered or received:

- a. Upon personal delivery to Contractor or its authorized representative, which delivery may be accomplished by in person hand delivery, or via bona fide overnight express services; or
- b. Five (5) days after depositing in the United States mail a letter, which is either certified or registered, addressed to Contractor or APS at its official address, for use under this Agreement, as the case may be. For purposes of this Agreement, notices, instructions or other written communications shall be sent or delivered at the following address:

To Contractor:

And to APS:

Superintendent
Atlanta Independent School System
130 Trinity Avenue, SW
Atlanta, Georgia 30303

With Copies To:

General Counsel
Atlanta Independent School System
130 Trinity Avenue, SW
Atlanta, Georgia 30303

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13.13 Publicity.

Any publicity regarding the services or goods provided under this Contract, including but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor shall not be released without prior written approval by APS. Contractor may, however, reference this Contract in proposals for other contracts or in client lists without prior APS approval.

13.14 Extent of Agreement.

This Contract represents the entire and integrated Contract between APS and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. APS and Contractor hereby waive and mutually release each other from any and all prior representations, negotiations or agreements not embodied in this Contract . This Contract is not intended to and shall not be construed to create any rights against the parties hereto by any persons or entities not a named party to this Contract. This Contract may be amended only by written instrument and only after such amendment has been authorized by the Board of Education, City of Atlanta.

13.15 Venue & Governing Law.

Venue of any action brought under this contract shall lie exclusively in the City of Atlanta, Fulton County, State of Georgia, or in the United States District Court for the Northern District of Georgia, Atlanta Division, without giving effect to its choice of law principles. Contractor hereby waives any and all objections to the exercise of personal jurisdiction and venue in these courts.

All matters giving arise under or relating to this Contract shall be governed and construed by the laws of the State of Georgia now in force and as hereafter amended from time to time. This paragraph represents the entire agreement between the parties regarding venue and governing law and replaces any other references to governing law or venue in the Contract Documents or Exhibits.

13.16 Force Majeure.

Both APS and Contractor shall not be considered in default in the performance of its obligations under this Agreement to the extent that the performance of its obligations is prevented or delayed by any cause beyond either's reasonable control, including without limitation: acts of God; acts or omissions of governmental authorities; strikes, lockouts or other industrial disturbances.

13.17 Severability.

In the event any provision or any portion of any provision of this Contract, or application thereof to any person or circumstances shall to any extent be held invalid or unenforceable, the remainder of this Contract or the application of such remaining provisions or remaining portion

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of said provision to any other person or circumstances shall not be affected thereby. Said remainder shall continue in full force and effect and shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Contract is held to be invalid, illegal, or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions of this contract will not be adversely affected.

13.18 Multiple Counterparts.

This Contract may be executed in multiple counterparts, each of which shall be deemed an original instrument, and such counterparts together shall constitute one and the same instrument.

13.19 Section Headings.

The section headings of this Agreement are for the convenience of the parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.

13.20 Number and Gender.

Any reference in this Contract to the singular includes the plural where appropriate, and any reference in this Agreement to the masculine gender includes the feminine and neuter genders where appropriate.

13.21 Rights and Remedies Cumulative.

Any enumeration of APS' rights and remedies set forth in this Contract is not exhaustive. APS' exercise of any right or remedy pursuant to this Contract does not preclude the exercise of any other right or remedy. All of APS' rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Contract, any other agreement between the Parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.

13.22 Time Is Of The Essence.

Time is of the essence with regard to performance of any services under this Agreement, unless the parties agree otherwise in writing.

13.23 Relationship Among Parties.

This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer- employee between the Parties, and the Parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither Party has any right or authority to assume or to create any obligation or responsibility on behalf of the other Party except as my from time to time be provided by written instrument signed by both parties.

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13.24 Authority.

The Parties hereby represent and warrant that the individuals executing the Agreement have the authority to legally bind APS and Contractor respectively.

13.25 Interpretation.

This Agreement is the joint product of negotiations between the Parties and shall not be interpreted or construed against either party hereto, regardless of which Party has been primarily responsible for its preparation.

13.26 Background Check.

APS requires that all individuals who will work on an APS site (including full-time, part-time and temporary employees, contractors and subcontractors) must be fingerprinted by APS and cleared through the Georgia Criminal Information Center System (GCIS) before they are assigned to work at APS. The cost of fingerprinting is **\$45.00** per individual and is the responsibility of Contractor. Any failure to comply with this requirement constitutes a breach of this Agreement.

13.27 Georgia Security and Immigration Compliance Act.

Contractor's full compliance with all applicable federal and state security and immigration laws, including without limitation O.C.G.A. § 13-10-90, *et seq.* as amended and Georgia Department of Labor Rule 300-10-1, *et seq.* is required. Contractor is required to affirm compliance by completing the appropriate Georgia Security and Immigration Compliance documents. Pursuant to O.C.G.A. § 13-10-91 no Contractor or subcontractor may propose a contract or enter into a contract with a public employer for the physical performance of services unless the Contractor or subcontractor is registered with and participates in the federal work authorization program to verify information of all newly hired employees, and provides certain required affidavits. Any Contractor, subcontractor, or sub-subcontractor of such Contractor or subcontractor, shall also be required to satisfy the requirements set forth herein.

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IN WITNESS WHEREOF, APS and the Contractor have caused this Agreement to be executed by the duly authorized representative of the day, month and year first above written.

Atlanta Independent School System _____

By: _____
Superintendent

By: _____

Its: _____

Date: _____

Date: _____